

Nos. 22-55988, 56036

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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AL OTRO LADO, INC., *et al.*,  
*Plaintiffs-Appellees/Cross-Appellants*,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, *et al.*  
*Defendants-Appellants/Cross-Appellees*,

and

the EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,  
*Appellant/Cross-Appellee*.

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On Appeal from a Final Judgment Issued by the U.S. District Court for the  
Southern District of California (Civil Action No. 3:17-cv-02366-BAS-KSC)

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**EXCERPTS OF RECORD  
VOLUME 3 OF 4**

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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(San Diego)**

AL OTRO LADO, Inc., *et al.*,

*Plaintiffs,*

v.

Chad F. WOLF, Acting Secretary of  
Homeland Security, in his official  
capacity, *et al.*,

*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 29**

[Redacted Public Version]

**From:** BROOKS, WILLIAM K  
**Sent:** Tuesday, October 25, 2016 11:36 AM  
**To:** SCHWAMM, JOHN A; HUMPHRIES, MICHAEL W; AGOSTTINI, JOE  
**Subject:** FW: Pending Placement

---

**From:** Carter, Albert E  
**Sent:** Tuesday, October 25, 2016 8:35 AM  
**To:** BROOKS, WILLIAM K <[REDACTED]>  
**Subject:** RE: Pending Placement

We are trying to get you some relief. Let me see what we can do.

Albert

Sent with Good ([www.good.com](http://www.good.com))

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**From:** BROOKS, WILLIAM K  
**Sent:** Tuesday, October 25, 2016 11:32:05 AM  
**To:** Carter, Albert E  
**Subject:** Pending Placement

Good morning:

Both San Luis and Nogales have far exceeded capacity are in desperate need of relief.

San Luis has 107 in custody.

Pending placement:

20 males adults

7 female adults

17 FAMU total 45 people

Nogales has 102 in custody.

Pending placement:

11 adults

13 FAMU total 29 people

Nogales has approximately 60 Haitian males waiting in line to get in and San Luis has approximately 90 in line.

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Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 30**

[Redacted Public Version]

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**From:** Owen, Todd C (AC OFO)  
**Sent:** Wednesday, October 5, 2016 3:26 PM  
**To:** HOFFMAN, TODD A; WAGNER, JOHN P; GOOD, BEVERLY  
**Subject:** FW: Two Urgent Issues

FYSA.

*Todd C. Owen*  
*Executive Assistant Commissioner*  
*Office of Field Operations*  
*U.S. Customs & Border Protection*

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**From:** Homan, Thomas [mailto:REDACTED]  
**Sent:** Wednesday, October 05, 2016 2:21 PM  
**To:** MCALEENAN, KEVIN K [mailto:REDACTED]; Ragsdale, Daniel H [mailto:REDACTED]  
**Cc:** Owen, Todd C (AC OFO) [mailto:REDACTED]; LUCK, SCOTT A (USBP) [mailto:REDACTED]  
**Subject:** RE: Two Urgent Issues

Here is where we are:

- We are currently at 39,650 aliens in custody. This is the highest level in our history. Unprecedented. We have officers moving aliens all over the country to create bed space for Haitians within the 9th Circuit. So there are many moving parts transferring aliens from one facility to another facility, many times in different states. We are pulling officers from other duties to assist with the movement and the Haitian ERO processing work. To add to this, we had to empty 650 beds in the Hurricane evacuation area in Florida because the facility was not rated high enough to safely withstand a storm of this size/strength. That is also requiring the detailing of officers from other duties to assist in the evac (both ERO detainees and ORR residents in south Florida). In addition, we have lost 650 needed beds. So we are busier right now than we have ever been and we are short staffed dealing with it. As far as bed space for adults, we are working 24/7 to find additional beds.

• 

Hope this helps.

---

**From:** MCALEENAN, KEVIN K  
**Sent:** Wednesday, October 05, 2016 12:18 PM  
**To:** Ragsdale, Daniel H  
**Cc:** Owen, Todd C (AC OFO); LUCK, SCOTT A (USBP); Homan, Thomas  
**Subject:** Two Urgent Issues

Dan,  
I know you are tracking developing issues with Haitians and UACs. I wanted to touch base directly and make sure we are lashed up and clear on our joint needs and efforts:

(1) Haitians in Baja California.

[REDACTED] I am advised that we have benefitted from 4-6 personnel from ERO that are working 2 per 2 shifts to help with processing. This is appreciated, but candidly, we were really hoping for a much larger effort. We were expecting 30 TDYs, two weeks ago, and increasingly free bed space as of 10/1. Is there anything we can do to ramp up this effort?

(2) UACs and HHS

You probably heard that HHS is evacuating Homestead and claims that, as a result, they are at capacity and can't accept any UACs as of this morning. This, despite their Deputy Secretary's statements at the last DC that they had fully adequate capacity on short recall, that they realized Homestead was in So. Florida and that hurricane season wasn't over. The UCG has a call on this right now, but I plan to follow up with HHS Deputy and was hoping you and Joe Nimmich could join that call later today. We can't wait until a Friday DC. Any ideas or options that you can offer would be appreciated.

Thanks,  
KM



Kevin K. McAleenan  
Deputy Commissioner  
U.S. Customs and Border Protection

LE

*We are the guardians of our Nation's borders.  
We are America's frontline.*

*Vigilance • Service • Integrity*

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**DEFENDANTS' EXHIBIT 31**

[Redacted Public Version]

**U.S. Customs and Border Protection  
Office of Field Operations  
Bullets for the Executive Assistant Commissioner  
October 18, 2016**

**Limited Distribution**

**EAC Bullets - Southwest Border Daily Operations Report**

**Executive Summary:**

U.S. Customs and Border Protection (CBP) southern land border ports of entry continue to experience extraordinary levels of unlawful migration as thousands of foreign nationals, unaccompanied alien children (UAC), and family units attempt to migrate to the U.S. via a Central American land route the result of this surge has caused an extraordinary draw of resources and is outpacing temporary holding capacities at ports of entry.

**Details:**

- CBP, in collaboration with ICE/ERO, continues to explore the feasibility of using ERO's El Centro detention facility as a remote collection and processing center to alleviate congestion at the San Ysidro and Calexico Ports of Entry
  - HQ-OFO-Incident Management Division (OFO-IMD) is currently in El Centro assessing the viability of restoring operations at a retired ICE/ERO detention facility. Additionally, OFO-IMD will also be meeting with port leadership in San Luis, AZ and Calexico, CA and closing out with the DFO at San Diego Field Office.
- CBP has deployed personnel to the impacted ports of entry, streamlining administrative processes, utilized technology applications as a force-multiplier, and re-framed the distribution of workload.
  - OFO has deployed 100 additional officers to support the San Diego Field Office ports of entry;
  - CBP has deployed (16) CBP personnel with special language fluency (Creole) to support the processing of Haitian nationals at the POE.
  - OFO has leveraged remote processing capabilities at impacted POEs. OFO, in collaboration with the Office of Chief Counsel, ICE, and USCIS is streamlining administrative case processes.
- OFO San Diego continues their partnership with USBP to support the overflow of inadmissible aliens in custody.
  - USBP provided OFO San Diego with temporary holding space at the Imperial Beach Border Patrol Station and Barracks Five/Chula Vista location in South San Diego.
- Inadmissible adult males, such as Haitians are being relocated to the Imperial Beach Border Patrol Station where ICE/ERO then employs alternatives to detention (ATD) programs prior to release, if appropriate.

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SW Border Field Office Admissibility Case Processing, October 17, 2016												
PERSONS IN OFO CUSTODY					Capacity							
Field Office	UAC	FAMU	SINGLE	TOTALS								
San Diego						155%						
Tucson						231%	(*San Luis POE)					
El Paso						99%						
Laredo						106%						
Totals:						175%						
SAN DIEGO FIELD OFFICE												
PORT	CUSTODY INTAKE			IN PROCESS (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
San Ysidro												
Calexico												
Totals:												
TUCSON FIELD OFFICE												
PORT	CUSTODY INTAKE			IN PROCESS (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
San Luis												
Nogales												
Totals:												
EL PASO FIELD OFFICE												
PORT	CUSTODY INTAKE			PROCESSING (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
Paso del Norte												
BOTA												
Ysleta												
Totals:												
LAREDO FIELD OFFICE												
PORT	CUSTODY INTAKE			PROCESSING (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
Brownsville												
Hidalgo												
Laredo												
Totals:												

San Diego Field Office Haitian Inadmissibles (Since 09/21/2016)									
POE	Disposition	10/11/2016	10/12/2016	10/13/2016	10/14/2016	10/15/2016	10/16/2016	10/17/2016	Sum:
ANDRADE, CA (2502)	EXPEDITED REMOVAL (I-860)								7
POE Subtotal									7
CALEXICO, CA (2503)	EXPEDITED REMOVAL (I-860)	31	34	36	38	36	30	33	809
	EXPEDITED REMOVAL WITH CREDIBLE FEAR				2				12
	NOTICE TO APPEAR DETAINED (I-862)	4	3	2		3	3	2	124
	NOTICE TO APPEAR RELEASED (I-862)								2
	PAROLED								4
POE Subtotal		35	37	38	40	39	33	35	951
SAN YSIDRO (2504)	EXPEDITED REMOVAL (I-860)	51	61	30	66	66	53	59	1,225
	EXPEDITED REMOVAL WITH CREDIBLE FEAR		1		3	1	1	2	83
	NOTICE TO APPEAR DETAINED (I-862)	14	4	14	17	10	17	1	245
	NOTICE TO APPEAR RELEASED (I-862)	1			2	1	1		14
	PAROLED								1
POE Subtotal		66	66	44	88	78	72	62	1,569
Grand Total		101	103	82	128	117	105	97	2,527

Prepared by: OFO, Migration Coordination Center  
Date: October 18, 2016

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20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**  
22 **(San Diego)**

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*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 32**

[Redacted Public Version]



## U.S. Customs and Border Protection

# Southern Border Inadmissibility Processing Report for October 21, 2016

(Data collected as of 1200 PM October 20, 2016)

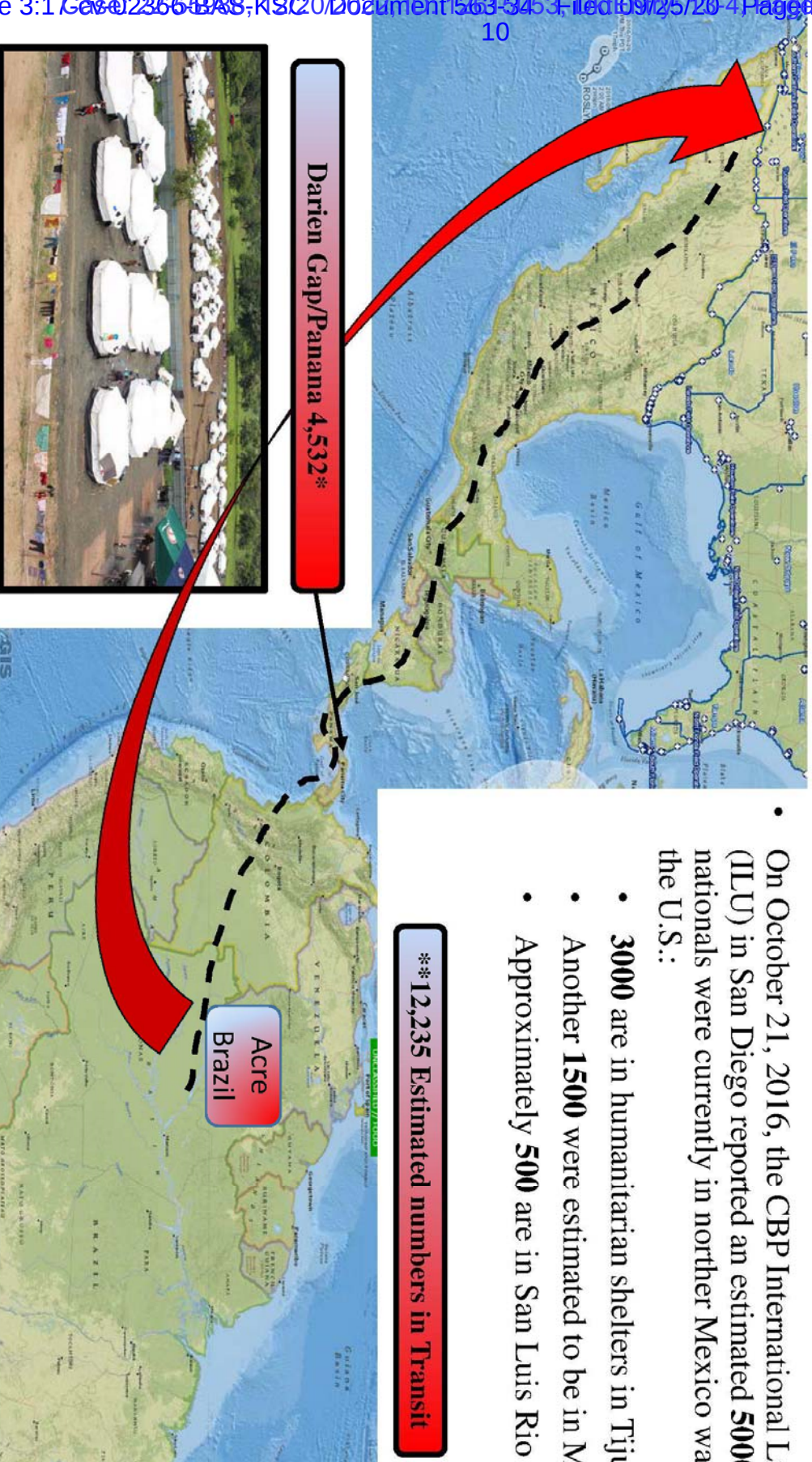
# Haitian Migration Trend Analysis



- On October 21, 2016, the CBP International Liaison Unit (ILU) in San Diego reported an estimated **5000** Haitian nationals were currently in northern Mexico waiting to enter the U.S.:

- **3000** are in humanitarian shelters in Tijuana.
- Another **1500** were estimated to be in Mexicali, and
- Approximately **500** are in San Luis Rio Colorado.

**\*\*12,235 Estimated numbers in Transit**



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# INADMISSIBLE HAITIAN NATIONALS PROCESSED

Calexico, San Luis and San Ysidro Haitian Inadmissibles (Previous 7 Days)

POE	Disposition	10/14/2016	10/15/2016	10/16/2016	10/17/2016	10/18/2016	10/19/2016	10/20/2016	Sum:
CALEXICO, CA (2503)	EXPEDITED REMOVAL (I-860)	37	34	27	27	40	35	35	235
	EXPEDITED REMOVAL WITH CREDIBLE FEAR	2			3				5
	NOTICE TO APPEAR DETAINED (I-862)	1	4	6	3		4		18
	POE Subtotal	40	38	33	33	40	39	35	258
SAN LUIS, AZ (2608)	EXPEDITED REMOVAL (I-860)		2		4	4	13	1	24
	EXPEDITED REMOVAL WITH CREDIBLE FEAR	12	4	7	11		1	2	37
	NOTICE TO APPEAR DETAINED (I-862)	7	16	19	18	16	16	4	96
	POE Subtotal	19	22	26	33	20	30	7	157
SAN YSIDRO (2504)	EXPEDITED REMOVAL (I-860)	66	66	51	60	69	53	69	434
	EXPEDITED REMOVAL WITH CREDIBLE FEAR	3	1	2	2	3	2	1	14
	NOTICE TO APPEAR DETAINED (I-862)	17	10	19	5	8	8	8	75
	NOTICE TO APPEAR RELEASED (I-862)	2	1	1					4
POE Subtotal		88	78	73	67	80	63	78	527
Grand Total		147	138	132	133	140	132	120	942

• 7-Day Average = 135



# SW Border Field Office Admissibility Case Processing, October 20, 2016

PERSONS IN OFO CUSTODY				
Field Office	UAC	FAMU	SINGLE	TOTALS
San Diego				
Tucson				
El Paso				
Laredo				
Totals:				

Capacity	
	153%
	146%
	88%
	100%
	163%

(\*San Luis POE)

USBP			
UAC	FAMU	SINGLE	

# El Paso Processing October 20, 2016

El PASO FIELD OFFICE									
PORT	CUSTODY INTAKE			PROCESSING (Pending)			PROCESSED Awaiting Transfer		PROCESSED (Released/Transferred)
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
Paso del Norte									
BOTA									
Ysleta									
Totals:									

## Case Processing:

The EPFO stood up an overflow staging area at the Port of Tornillo. Officers from the Ports of Columbus, Santa Teresa, and El Paso were detailed to Tornillo to assist.

The Port of Tornillo is able to temporarily hold up to [REDACTED] FAMU subjects.

Tornillo's hours of operation are 0600 – 2200 hours. However, the staging area operates 24/7.

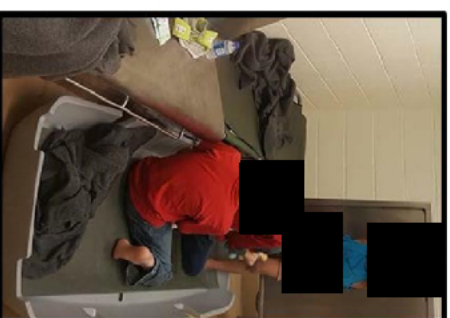
Increased transports between Ports, to ERO facilities, and to the Airport is straining OFO vehicle and personnel resources.

## Port Considerations:

ERO continues to provide additional charter flights and continues to accept FAMU cases processed for NTA for local release to include coordination with local NGOs.

Local ERO does not foresee issues with detention bed space locally at this time

For this weekend, ERO indicates San Antonio residential centers are open for ER and placements. And ERO has coordinated with local NGO for local release of a limited number of FAMU cases processed for NTA.



# Tucson Processing October 20, 2016

TUCSON FIELD OFFICE												
PORT	CUSTODY INTAKE			IN PROCESS (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
San Luis												
Nogales												
Totals:												

The POE has converted additional administrative spaces for processing; OFO Field Office and USBP Sector Leadership are engaged

- o USBP's Yuma and Welton Stations are providing resources to OFO San Luis;
- o Single adults are being processed for Expedited removal;
- o Family units are being processed for I-240 removal proceedings.

On October 20, 2016, ERO transported six (6) pregnant inadmissible applicants to Phoenix for Alternatives to Detention (ATD) release.

ERO also transported four (4) Family Units (nine [9] total persons) for local release in Yuma. Transportation continues to be a plaguing issue; example; ERO will go to Yuma BP station but will not go 25 more miles to the POE.

Placement is very slow with family units, single males' placement is the only thing that is running smooth. However, CBPOs normally have to make an 8-hour round trip to get them there.



# San Diego Processing October 20, 2016

SAN DIEGO FIELD OFFICE												
PORT	CUSTODY INTAKE			IN PROCESS (Pending)			PROCESSED Awaiting Transfer			PROCESSED (Released/Transferred)		
	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE	UAC	FAMU	SINGLE
San Ysidro												
Calexico												
Totals:												

## Staffing Adjustments and Reassignments:

- Reassignment of Port Support Personnel to assist with processing, transportation, in-custody care.
- Supported with TDY staff for *Operation Overflow* + 12 special language CBPOs + 4 special language BPAs
- Support by processing via remote technology

## Case Processing and Detention:

- Coordinating with ERO to determine bed space provided.

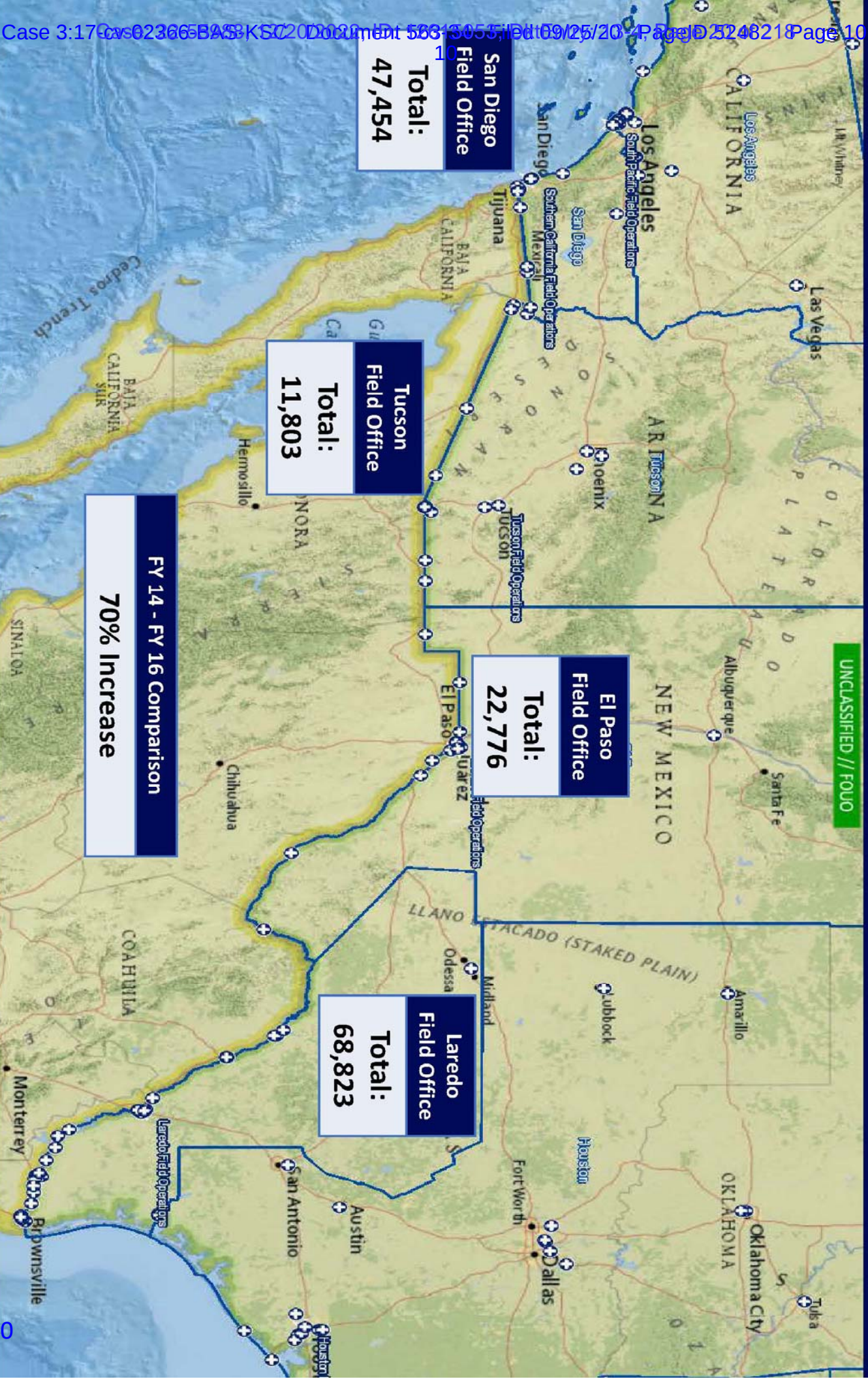
## Port Considerations:

- Expanding use of port administrative space for temporary holding.



# FY 2016 Inadmissible Aliens

UNCLASSIFIED//FOUO



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**DEFENDANTS' EXHIBIT 33**



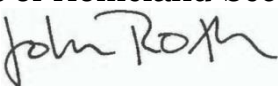
## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

October 10, 2017

MEMORANDUM FOR: The Honorable Claire M. Grady  
Under Secretary for Management  
Department of Homeland Security

FROM: John Roth   
Inspector General

SUBJECT: Investigation of Allegations Related to Temporary  
Holding Facilities and Non-Intrusive Inspection  
Equipment at U.S. Customs and Border  
Protection (OSC File No. DI-17-0368)

The U.S. Office of Special Counsel (OSC) received a whistleblower disclosure alleging that Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection (CBP), engaged in conduct that constitutes an abuse of authority and a gross waste of funds. Specifically, the whistleblower alleged that against the advice of senior CBP executives:

- McAleenan improperly allocated \$32,200,000 of CBP's Operations and Maintenance (O&M) funds to construct and operate temporary holding facilities in Tornillo, Texas and Donna, Texas from November 2016 to March 2017; and
- McAleenan halted Border Patrol agents' use of Non-Intrusive Inspection (NII) equipment from June 9, 2017 to June 19, 2017 in order to avoid scrutiny from the National Border Patrol Council prior to his confirmation hearing.

On July 14, 2017, OSC referred this complaint to then-DHS Secretary General John F. Kelly. The Department referred the matter for our consideration, and we agreed to investigate the allegations. Pursuant to 5 U.S.C. § 1213(c)(1)(B) and OSC procedures, a response from the Secretary (or her delegate) is due by November 13, 2017.

We have not substantiated these allegations. The decision to establish and operate the Tornillo and Donna facilities was based on sound



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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evidence, after significant research, and with the consensus of CBP senior officials. Separately, while McAleenan did unilaterally decide to temporarily suspend the use of NII equipment by Border Patrol agents in the El Paso, Texas Sector for 10 days in June 2017, he did not receive objections from any senior officials, and we identified no evidence that his decision was based on anything other than a concern for the safety of CBP employees and their potential lack of confidence in the safety of the NII equipment. Consequently, we found no violations of law, rule, or regulation, or any gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. See 5 U.S.C. § 1213(a)(2).

In the course of this investigation, we interviewed approximately 15 witnesses and reviewed emails and other key documents. The whistleblower declined our request for an interview, but provided answers to our written questions.

#### **Tornillo and Donna Temporary Holding Facilities**

According to the whistleblower, McAleenan decided to build temporary facilities to hold undocumented immigrants at Tornillo, Texas and Donna, Texas. The whistleblower alleged that McAleenan made this decision unilaterally, without a proper basis, and against the advice and objections of CBP senior executives. The whistleblower stated the facilities were each built to hold approximately 450 individuals, but they never held more than a fraction of that capacity. The whistleblower claimed that CBP spent approximately \$32.2 million of O&M funds to build and operate these facilities, which left insufficient funds to purchase ammunition and other necessary equipment. Finally, the whistleblower claimed it was improper for CBP to use appropriated funds on holding facilities because U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), and not CBP, is responsible for detaining aliens.

We found that the Tornillo and Donna facilities were built to address a documented surge of migrants arriving on the Southwest border in 2016. While the facilities were never filled to capacity, that was because the surge abruptly, drastically, and unexpectedly ended. The decision to build the facilities was collaborative, and we found no disagreement about that decision among CBP leadership. We also found that CBP kept DHS, Congress, and the White House informed about the need for and



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cost of the holding facilities, and we identified no appropriations, accounting, or procurement abnormalities related to the temporary facilities.

The decision to build the Tornillo and Donna facilities had a sound basis

In the summer and fall of 2016, CBP observed a large increase of foreign nationals arriving at the Southwest border. For example, in October and November 2016, the number of Border Patrol apprehensions and inadmissible aliens who arrived at Ports of Entry (POE) was 75% higher than the prior five-year averages for those months. Many witnesses told us this surge was related to the upcoming U.S. presidential election. Regardless of the election's outcome, there was a strong desire among migrants to arrive in the United States before the new president took office. According to the witnesses, the migrants believed they might receive amnesty if Hillary Clinton took office or that the border would close under Donald Trump's administration. Additionally, there were also substantial increases of Cubans and Haitians arriving at the U.S. border.

CBP lacked sufficient space to hold all the apprehended and inadmissible aliens. Generally, CBP only holds aliens for short periods of time while they are being processed and awaiting transfer to either the U.S. Department of Health and Human Services (HHS) (for unaccompanied alien children (UAC)) or to ICE ERO (for everyone else).<sup>1</sup> However, HHS and ICE ERO both struggled to keep up with the surge of individuals, which resulted in a backup at CBP facilities. In particular, the POEs became especially crowded. Several witnesses told us that aliens, including children, were forced to sleep in hallways, conference rooms, and breakrooms because there was nowhere else to put them. Witnesses told us that holding people in these conditions presented health and safety concerns for both the people being held and the CBP employees at these facilities. Moreover, CBP employees were taken away from their regular enforcement duties in order to help feed and care for the detainees. According to one witness, CBP facilities were "drowning in bodies."

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<sup>1</sup> CBP's policy is to make every effort to hold individuals for the least amount of time possible and "generally not . . . longer than 72 hours." U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search (Oct. 2015), § 4.1. Additionally, except in exceptional circumstances, UACs must be transferred to HHS within 72 hours of determining that the child is a UAC. 8 U.S.C. § 1232(b)(3).



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Seeking to learn lessons from and avoid repeating mistakes made during a prior surge of UAC in 2014,<sup>2</sup> CBP established a Crisis Action Team (CAT team) in October 2016 to manage its response to this migration surge. Composed of representatives from various CBP components, the CAT team compiled data and developed strategies to address the surge and overcrowding. The CAT team combined data and intelligence gathered by different CBP offices into a daily report, which it provided to CBP leadership. The CAT team also briefed the leadership daily on the data and what it was doing to address the surge.

The CAT team considered several approaches to address the overcrowding. For example, it tried working with Mexico to “meter” the number of individuals allowed to enter the U.S. at a given time, to ensure that CBP had space for everyone. It also tried getting ICE to increase the number of deportation flights. Additionally, ICE offered to transfer a building it was no longer using to CBP so that CBP could convert it into a holding facility. However, the building was far from where CBP had the most need and CBP did not want to assume permanent control of it.

The CAT team, in conjunction with CBP’s Office of Facilities & Asset Management (OFAM), also explored building temporary facilities to hold aliens until ICE ERO and HHS could accept them. In CBP’s view, temporary facilities offered several advantages. First, they could be built much more quickly and less expensively than permanent facilities. Within just a few weeks, CBP could solicit bids, sign a contract, and have a facility built and operational. Temporary facilities were also scalable, meaning capacity could be increased or decreased relatively easily to meet demand. Additionally, the facilities could be primarily staffed by contractors, which was attractive to CBP because it would allow CBP personnel to return to their regular enforcement duties rather than caretaking and custodial work.

In evaluating potential sites for temporary facilities, OFAM, the CAT team, and CBP leadership evaluated several factors, such as the

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<sup>2</sup> See, e.g., Memoranda from John Roth, DHS Inspector General to the Honorable Jeh C. Johnson re: Oversight of Unaccompanied Alien Children (July 30, Aug. 28 & Oct. 2, 2014), [https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Over\\_Un\\_Ali\\_Chil.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Over_Un_Ali_Chil.pdf); [https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Sig\\_Mem\\_Over\\_Unac\\_Alien\\_Child090214.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Sig_Mem_Over_Unac_Alien_Child090214.pdf); [https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Over\\_Un\\_Ali\\_Child\\_100214.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/Over_Un_Ali_Child_100214.pdf).



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locations of migration flows, accessibility, and logistical needs. After considering several sites in Texas, Arizona, and California they ultimately selected Tornillo as the first location. They chose Tornillo because it was adjacent to a POE, it was on land already owned by the government, and it was only 45 miles from El Paso, which was one of the most overcrowded POEs. They later selected Donna as the second location because it was also near the migration flow, it had a lot of available land, and it met other logistical needs. Tornillo opened on November 25, 2016 and Donna opened on December 10, 2016. Both facilities became operational approximately two weeks after CBP selected the site. Both facilities were initially built to hold up to 500 people, and both could be expanded if necessary.

In December 2016 and January 2017, the number of aliens arriving at the border began to decline from the prior months but was still significantly higher than in prior years. Many witnesses told us this was a normal pattern. Every year, the numbers decline in these months because people stay in their native countries to celebrate the holidays. Then, the numbers begin to increase in the new year and into the spring. Therefore, even though fewer people arrived in December and January, the witnesses uniformly told us that they expected the numbers to rise again. However, this did not happen. After the presidential inauguration, the numbers dropped suddenly and drastically, to historic lows. The witnesses told us they were stunned at how low the numbers were.

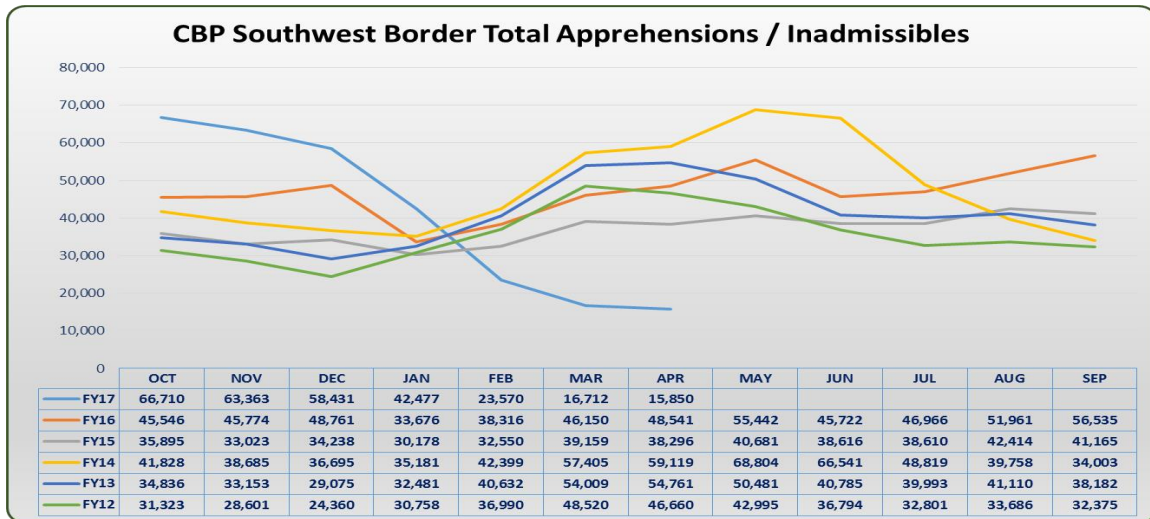
Table 1, taken from the CAT team's May 2, 2017 briefing, shows the total number of Border Patrol apprehensions and inadmissible aliens who arrived at POEs on the Southwest border. As shown, from August 2016 through January 2017, this number was significantly higher than any of the prior five years, and it drastically declined beginning in February 2017. In prior years, the table shows the typical December – January decrease and February – May increase that many of the witnesses described to us.



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Table 1



As the numbers of apprehensions and inadmissible arrivals dropped, so too did the number of people being held at the Tornillo and Donna facilities. By February, there were only a few days in which the two facilities held more than 100 people combined (out of 1,000 total capacity). Therefore, in mid-February 2017, CBP decided to place the facilities in “stand-by” mode. This meant that the facilities remained intact with basic maintenance, but they did not hold any detainees. It cost approximately \$1.8 million to keep the two facilities in stand-by mode each month, which was approximately \$2.8 million less than keeping them fully operational. The facilities could be reactivated from stand-by status within 72 hours, at a minimal cost. In contrast, if the facilities were permanently closed, it would cost approximate \$6.6 million to reopen them if necessary. Therefore, in CBP’s view, keeping the facilities in stand-by mode was a form of insurance, in case the migration flow increased again. By mid-April 2017, the numbers had not increased and so McAleenan gave the order to permanently close the facilities.

The Tornillo facility held a total of 5,721 aliens over 82 days (November 25, 2016 – February 14, 2017). It held an average of 174.34 aliens per day. The Donna facility held 2,172 aliens over 63 days (December 10, 2016 – February 10, 2017). It held an average of 43.52 aliens per day.<sup>3</sup> The total cost for the two facilities was approximately \$20 million.

<sup>3</sup> The daily average is higher than the number of aliens divided by the number of days the facility was open because aliens often remained at a facility for more than one day.



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#### The decision to build and maintain the facilities was a collaborative agency decision

We found that McAleenan did not unilaterally make the decision to build the Tornillo and Donna facilities, as the whistleblower alleged. Many CBP senior executives, as well as the CAT team, were closely involved in the process of addressing the surge and the specific decisions to open and locate temporary holding facilities. The CAT team met with CBP senior executives daily during this time, and one senior member of the CAT team told us that McAleenan did not dictate any particular course of action. Instead, according to the witnesses we interviewed, there was always a discussion based on the information provided by the CAT team. Indeed, McAleenan was not even CBP's Commissioner when the facilities were built in 2016. Then-Commissioner Gil Kerlikowske ultimately made the decision to open the facilities.

Moreover, CBP was in constant communication about the migration surge with the White House, then-DHS Secretary Jeh C. Johnson, then-acting DHS Deputy Secretary Russ Deyo, and others throughout DHS and its components. One senior member of the CAT team recounted attending regular meetings at DHS headquarters where then-Secretary Johnson was briefed on the crisis and approved a number of proposed solutions, including the temporary facilities. We also identified emails confirming the Secretary's awareness and involvement.

Every current and former CBP senior executive whom we interviewed (which includes every person the whistleblower identified as objecting to the facilities) told us they agreed with the decision to establish the temporary facilities. Most witnesses also told us that all CBP senior executives agreed with the decision to open the Tornillo and Donna facilities, though one witness recalled another senior official who agreed with the need for the temporary facilities, but argued that it was ICE's responsibility to establish them. While we reviewed documents that identified potential benefits and risks of various measures for addressing the migration surge, including the temporary facilities, we found no emails or documents showing major objections to the proposed plan. Nor

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The daily averages above reflect the total number of aliens that were at each facility each day, regardless of how long each alien spent at the facility. We identified other CBP reports that showed different figures because the data was collected using different methodologies (e.g. measuring the number of aliens at the facilities at one particular time each morning).



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did we identify any documents that contradicted the witnesses' assertions that CBP leadership was generally all in agreement with the decision to open the Tornillo and Donna facilities.

However, there was some disagreement as to when to close the facilities. In March 2017, several CBP executives recommended permanently closing the facilities (which at that time were in stand-by status) because they believed the migration levels would remain low due to policy changes and other factors. However, McAleenan decided to keep the facilities in stand-by status for one additional month. He told us there were several reasons for his decision. First, he worried that policy changes at ICE might lead to another backup. Second, he was mindful that a recent Executive Order and DHS guidance for implementing that order instructed CBP to ensure sufficient short-term detention capacity.<sup>4</sup> Third, he was concerned that the migrants' initial reluctance to come to the U.S. after the inauguration might wear off. Finally, he feared the annual Spring migration increase. We identified a contemporaneous email demonstrating McAleenan's concern related to ICE, but no documentation of the other concerns he shared with us. Nonetheless, his explanation was credible and we found no evidence to the contrary.

In any event, no senior official we spoke to, including the ones who recommended closing the facilities in March, criticized McAleenan's decision to keep the facilities in stand-by status for another month. To the contrary, the officials said they understood McAleenan's decision, that it was a judgment call, and that it was not an objectively incorrect decision. The following month, McAleenan accepted the recommendation and decommissioned the facilities.

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<sup>4</sup> On January 25, 2017, President Trump signed Executive Order 13,767, which directed the DHS Secretary to "take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico" and "immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law . . . ." Exec. Order No. 13,767, §§ 5(a), 6. On February 20, 2017, then-DHS Secretary General Kelly issued a memorandum implementing the Executive Order that instructed the ICE Director and CBP Commissioner to "take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable" and for CBP to focus on expanding "short-term detention" capability. Memorandum from John Kelly, DHS Secretary to Kevin McAleenan, Acting Commissioner, CBP, *et al.*, Implementing the President's Border Security and Immigration Enforcement Improvements Policies, [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).



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We identified no appropriations, accounting, or procurement abnormalities associated with the Tornillo and Donna facilities

The whistleblower claimed it was unlawful for CBP to use appropriated funds on “detention” facilities because only ICE may detain aliens. Similarly, some witnesses told us that others within CBP believed ICE should be responsible for building temporary facilities because ICE was the cause of the backlog. As an initial matter, there was nothing fundamentally improper about CBP establishing temporary facilities to hold aliens. The Tornillo and Donna facilities merely did what CBP is statutorily required to do (and has continued to do since the facilities closed) – holding aliens in short-term detention until they can be processed and transferred to HHS or ICE ERO. During the surge, CBP simply ran out of space to hold the aliens in its existing facilities, and the temporary facilities were built to expand its capacity.

Moreover, CBP was transparent about the Tornillo and Donna facilities with DHS, Congress, and the White House. Indeed, CBP argued to then-DHS Secretary Johnson that ICE should build the facilities, but he decided that CBP would be responsible for standing up the facilities. During the migration surge, CBP regularly briefed and communicated with Congress about the surge and its costs, and provided specific information about the Tornillo and Donna facilities. For example, in November 2016, CBP representatives, along with representatives from DHS, ICE, and U.S. Citizenship and Immigration Services, provided a briefing on the surge to staff from the Homeland Security Subcommittees of Congress’ Appropriations Committees. During that briefing, CBP summarized the surge’s impact on its budget and identified its surge-related expenses, including the actual and projected costs of the Tornillo and Donna facilities. In January 2017, CBP again briefed staff from those subcommittees on its surge response and provided updated cost information on the Tornillo and Donna facilities. Finally, McAleenan told us, and we found emails confirming, that White House officials were closely involved in managing the surge and were well aware of the Tornillo and Donna facilities.

Nor did we find any other appropriations issues related to the Tornillo and Donna facilities. CBP was operating under two continuing resolutions (CR) during much of the time it was addressing the surge.



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During the first CR,<sup>5</sup> CBP was able to address its surge-related expenses, including the Tornillo and Donna facilities, with the funds it had been apportioned by the Office of Management and Budget (OMB). However, CBP projected that its surge-related expenses would continue to increase after the CR expired, and therefore asked Congress for the authority in the next CR “to obligate funding under the CR formula at a rate for operations necessary to respond to ongoing unpredictable surges in migration.”<sup>6</sup> Congress granted CBP this flexibility through an anomaly in the second CR for Fiscal Year 2017.<sup>7</sup> A CBP official familiar with the anomaly process told us that CBP followed typical procedures for seeking and receiving this anomaly. After Congress included this anomaly in the second CR, DHS requested an exception apportionment from OMB on CBP’s behalf.<sup>8</sup> The materials accompanying this request specifically referenced the Tornillo and Donna facilities. OMB approved the exception apportionment request in February 2017.

We also found that CBP used the correct source of funds for the temporary facilities and the other surge expenses. CBP used funds from the Operations and Support (O&S) appropriations category, which is the category used to support the costs associated with DHS operations and maintenance activities.<sup>9</sup> This funding category was new for Fiscal Year 2017 so there was no precedent for using it. However, Congress validated this approach by twice later using the O&S category for surge expenses: in the anomaly in the second CR and in its enacted Fiscal Year 2017 appropriation for CBP.

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<sup>5</sup> The first CR was in place October 1, 2016 – December 9, 2016. Continuing Appropriations Act, 2017, Pub. L. No. 114-223, div. C, § 106, 130 Stat. 908, 909–10 (2016).

<sup>6</sup> See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, FY 2017 CONTINUING RESOLUTION (CR) APPROPRIATIONS ISSUES (ANOMALIES REQUIRED FOR A CR THROUGH MARCH) 8.

<sup>7</sup> Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, div. A, § 101, 130 Stat. 1005, 1008 (2016) (amending first CR to add section 163). The second CR for Fiscal Year 2017 was in place December 10, 2016 – April 28, 2017.

<sup>8</sup> An exception apportionment “is a colloquial term that describes the written apportionment that is issued for operations under a [CR], in lieu of the OMB-issued automatic apportionment.” OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 120 5 (2016).

<sup>9</sup> DHS, Financial Management Policy Manual ch. 2, § 2.0 15 (Oct. 1, 2016).



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While we did not formally audit the procurement of the Tornillo and Donna facilities, we found nothing in either our review of documents or interviews of relevant personnel which would indicate any abnormality in the procurement process. Witnesses told us that CBP relied mainly on its procurement staff to handle the procurement process for the facilities, and that McAleenan and other senior executives did not interfere with or influence the process. Nor is there evidence that McAleenan benefitted in any way from the facilities contracts. He was not involved in the procurement process, his financial disclosure forms reveal no financial ties to the contractor that was selected, and no witnesses were aware of McAleenan receiving any benefit from the contracts. Indeed, McAleenan seemed to genuinely not recognize the name of the contractor during our interview of him.

Lastly, we did not substantiate the whistleblower's claim that the Tornillo and Donna facilities left CBP unable to purchase ammunition and other necessary equipment. We asked the whistleblower for more information about this allegation, but he/she could not identify any specific needs that were not met because CBP funded the facilities. In fact, in the Fiscal Year 2017 omnibus appropriation, Congress included sufficient "surge operations" funding to CBP to cover all of its surge-related costs. Therefore, CBP was eventually made whole for all of the costs associated with the Tornillo and Donna facilities. Before the omnibus appropriation, DHS acknowledged to Congress that CBP had temporarily diverted funds from other needs to pay for the facilities, but witnesses told us that no mission critical requirements or equipment were unfunded.

In our view, CBP's decision to stand up the two detention facilities in the manner it did was reasonable and did not constitute an abuse of authority or a gross waste of funds.

### **Shutdown of Non-Intrusive Inspection (NII) Equipment**

The whistleblower separately alleged that in response to a National Border Patrol Council (NBPC) advisory, McAleenan ordered Border Patrol agents on the Southwest Border to stop using NII equipment from June 9, 2017 to June 19, 2017. According to the whistleblower, McAleenan ordered this shutdown even though senior Border Patrol officials informed him that CBP had previously shut down the NII equipment, examined it, and determined it to be safe. Further, the whistleblower



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suggested that McAleenan did not conduct a substantive review of the NII equipment during the June shutdown, and allowed Office of Field Operations (OFO) officers at POEs, who are not NBPC members, to continue using NII equipment. The whistleblower claimed McAleenan ordered the shutdown in order to avoid NBPC scrutiny before his confirmation hearing.

We found no evidence that McAleenan ordered the shutdown for any reasons other than his concerns for the health and safety of CBP employees and their confidence in the NII equipment. At the time he ordered the shutdown, McAleenan was unaware that the NII equipment in question was previously examined in March 2017. While he learned that shortly after ordering the shutdown, he did not cancel the shutdown because he believed the complaint was specific and credible and he did not know the details of the prior examination. Moreover, the NBPC advisory was specific to Border Patrol agents in the El Paso region and so, in McAleenan's view, there was no reason to stop using NII equipment in other regions or at POEs. During the June shutdown, CBP leadership reviewed the results of the prior examination, consulted with subject matter experts, and determined that no further testing was necessary to confirm the safety of the equipment.

McAleenan was not aware of the prior examination when he ordered the shutdown

On June 9, 2017, the Deputy Chief of the Border Patrol briefed CBP leadership about a NBPC advisory she had just received. The advisory stated that there were "at least 8 confirmed cases of cancer (7 Papillary Thyroid Carcinoma, 1 Medullary Thyroid Carcinoma) among" Border Patrol agents who used NII equipment in the El Paso Sector. McAleenan was not at the briefing because he was on official travel in Mexico City. Following the briefing, the Acting CBP Chief of Staff forwarded the NBPC advisory to McAleenan, and 17 minutes later, McAleenan responded with an instruction to stand down the equipment.

We confirmed McAleenan's assertion that when he received the NBPC advisory on June 9, 2017, he was not aware that the NII equipment in El Paso previously had been shut down and examined in March 2017. The March shutdown was ordered by the El Paso Sector Chief, not by officials at CBP headquarters in Washington. Most of the headquarters officials we spoke to said they were not aware of the March shutdown when they received the NBPC advisory in June, and they did not think McAleenan



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was aware of it either. We reviewed McAleenan's emails between March and June 2017, and found no mention of the March shutdown or any other NII equipment safety concerns until he received the NBPC advisory on June 9, 2017.

Later on June 9, 2017, after McAleenan had already ordered the shutdown, he received a brief timeline about the March shutdown. However, because he was in Mexico City and attending meetings all day, he was not able to speak to anybody extensively about the March shutdown or fully evaluate the thoroughness of that inspection. Therefore, he did not reverse his decision.

McAleenan offered credible reasons for ordering the June shutdown and received no objections about that decision

McAleenan told us he was most concerned that eight people within the El Paso Sector had been diagnosed with cancer. He believed that eight agents with similar cancers within one region were too many to be a coincidence. Further, he thought the specificity of the diagnoses in the advisory gave it credibility. McAleenan said he decided to shut down the equipment only in the El Paso Sector, and only within the Border Patrol, because the eight diagnoses there suggested that the problem was localized. Moreover, shutting down OFO's use of NII equipment at the POEs would be much more debilitating than shutting down the Border Patrol's use of it. NII equipment is one of many tools that the Border Patrol uses, and a temporary shutdown would not substantially harm the Border Patrol's operations. In contrast, NII is an integral tool for OFO, and a shutdown at the POEs would have a major impact.

McAleenan's explanation is internally consistent and was corroborated by other witnesses. The existence of eight cancer cases within a relatively small population suggests specific faulty equipment rather than a widespread problem with NII equipment. Therefore, it was not unreasonable, in our view, to stop using and examine the particular equipment in El Paso rather than shutting down all equipment throughout the country. Additionally, many witnesses confirmed that NII equipment is much more important to OFO than the Border Patrol. For example, a senior OFO official told us that NII equipment "is a cornerstone" of their operations at POEs, while a senior Border Patrol official told us that NII equipment is not a primary tool. In fact, the Border Patrol generally does not employ replacement equipment when a NII machine breaks or is taken offline for repairs. Instead, while NII



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equipment is out of service, the Border Patrol increases its use of other inspection tools.

The whistleblower claimed that several senior CBP officials communicated objections about the shutdown to McAleenan. While some witnesses told us they disagreed with McAleenan's decision and might have made a different decision, they understood his decision and did not express their objections to McAleenan. Nor did we find any emails suggesting that any objections were communicated to McAleenan about this decision. Before it was clear that McAleenan was only shutting down the Border Patrol's use of NII equipment, the head of OFO objected to shutting down the use of NII equipment at the POEs. But he did not express objections once he learned that the shutdown only affected the Border Patrol.

The Border Patrol developed and presented sound evidence for restarting the use of NII equipment to McAleenan

During the June shutdown, the Border Patrol re-evaluated the testing done in March, spoke with experts from CBP's Occupational Safety and Health Division who oversaw the March testing, reviewed recent radiation measurements, met with other stakeholders, and prepared detailed timelines and issue papers on the NII equipment. Based on this work, the Border Patrol determined that the NII equipment in the El Paso Sector was safe, and that no new testing was necessary. Consequently, after they presented their findings to McAleenan on June 19, 2017, he ordered the end of the shutdown.

Importantly, during the shutdown CBP attempted to confirm the eight cancer diagnoses alleged by the NBPC, but only identified two people who claimed their cancer diagnoses were related to their use of NII equipment. Given the importance McAleenan had placed on the number of alleged diagnoses, discovering that number was incorrect gave McAleenan comfort that the NII equipment was safe.

We found no evidence that McAleenan shut down the use of NII equipment to appease the union

McAleenan told us that he ordered the shutdown for two primary reasons – the safety of CBP employees and their confidence in using the NII equipment. First, he said safety of CBP employees “is paramount” and “an unacceptable risk.” Secondly, he said the morale and engagement



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of CBP employees was important and he wanted to be sure that they were comfortable using the equipment. We found nothing that contradicted this. Other witnesses told us that McAleenan was concerned only with the safety and welfare of CBP employees. Not one witness thought his confirmation process or his relationship with the union factored into McAleenan's decision at all. Nor did we find anything in McAleenan's emails that suggested anything untoward in regard to the union. There were limited references to the union before and during the shutdown, and those references reflected a balance of tension and cooperation that would be expected between an agency and a union.

Based on our review of the evidence, we do not believe McAleenan's decision to temporarily shut down the use of NII equipment in El Paso constituted an abuse of authority. We believe it was a reasonable decision based on the information he had at the time, and that he ordered the shutdown out of concern for CBP employees rather than his own self-interest.

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*Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(San Diego)**

AL OTRO LADO, Inc., *et al.*,

*Plaintiffs,*

v.

Chad F. WOLF, Acting Secretary of  
Homeland Security, in his official  
capacity, *et al.*,

*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 36**

[Redacted Public Version]

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**From:** LONGORIA, FRANK S  
**Sent:** Tuesday, November 15, 2016 2:09 PM  
**To:** HIGGERSON, DAVID P  
**Subject:** FW: Meeting with INM

See below.

This is what I need to discuss with you.

Frank S. Longoria  
Assistant Director Field Operations – Border Security  
Office of Field Operations  
Laredo Field Office  
[REDACTED]

---

**From:** HUTTON, JAMES R  
**Sent:** Tuesday, November 15, 2016 12:35 PM  
**To:** LONGORIA, FRANK S [REDACTED]  
**Cc:** SCHROEDER-FAWCETT, JENNIFER L [REDACTED]  
**Subject:** FW: Meeting with INM

Frank

Just as a follow to our conversation apropos the highlighted portion of your message below. If any individual arrives at POE, we cannot just send them back to MX to wait to be processed but must process them upon arrival.

Let me know if you need any additional support from HQ to work out the operational/policy portion of this.

J. Ryan Hutton  
Deputy Executive Director (A)  
Admissibility and Passenger Programs  
RRB #2.4G-56  
Washington, DC  
[REDACTED]



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**From:** LONGORIA, FRANK S

**Sent:** Sunday, November 13, 2016 8:06:20 AM

**To:** LONGORIA, FRANK S; ALVAREZ, GREGORY; BRANDT, JOHN L; CANTU, CRESCENCIO JR; GARZA, NESTOR III; GONZALEZ, DAVID JOHN; HORNE, PETRA; PEREZ, ALBERTO D; RODRIGUEZ, CARLOS; SOLIS, EFRAIN

**Cc:** CANTU, JAVIER N; FLORES, ALBERTO A; HIGGERSON, DAVID P; SKINNER, BRADD M.; HARRIS, RODNEY H; DELAGARZA, ALFONSO; CRAWFORD, EUGENE E; MOLASKI, WILLIAM H; BRUMFIELD, BONITA; MARES, LIZET M

**Subject:** RE: Meeting with INM

Port Directors :

This only applies to Central Americans.

Frank S. Longoria

Assistant Director Field Operations - Border Security

Office of Field Operations

Laredo Field Office

---

**From:** LONGORIA, FRANK S

**Sent:** Saturday, November 12, 2016 2:42:07 PM

**To:** ALVAREZ, GREGORY; BRANDT, JOHN L; CANTU, CRESCENCIO JR; GARZA, NESTOR III; GONZALEZ, DAVID JOHN; HORNE, PETRA; PEREZ, ALBERTO D; RODRIGUEZ, CARLOS; SOLIS, EFRAIN

**Cc:** CANTU, JAVIER N; FLORES, ALBERTO A; HIGGERSON, DAVID P; SKINNER, BRADD M.; HARRIS, RODNEY H; DELAGARZA, ALFONSO; CRAWFORD, EUGENE E; MOLASKI, WILLIAM H; BRUMFIELD, BONITA; MARES, LIZET M

**Subject:** Meeting with INM

Port Directors:

[REDACTED] your staff is to provide the alien with a piece of paper identifying a date and time for an appointment and return then to Mexico. This is similar to what San Diego is doing. We understand the alien may express a fear of returning to Mexico and we will address as the situation dictates.

Please schedule a meeting with your INM counterparts ASAP. Let us know the date and time of the meeting as soon as it's scheduled. We will also need a summary of your meeting to include who you met with, what was discussed, what was agreed to, issues/concerns, and timeline.

That's all the information we have on the tasking but we can anticipate being asked to provide an update early next week.

Frank S. Longoria  
Assistant Director Field Operations - Border Security  
Office of Field Operations  
Laredo Field Office  
[REDACTED]

1 JEFFREY BOSSERT CLARK  
2 Acting Assistant Attorney General  
3 Civil Division  
4 WILLIAM C. PEACHEY  
5 Director, Office of Immigration Litigation –  
6 District Court Section  
7 KATHERINE J. SHINNERS (DC 978141)  
8 Senior Litigation Counsel  
9 ALEXANDER J. HALASKA (IL 6327002)  
10 Trial Attorney  
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12 Civil Division  
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15 Washington, D.C. 20044  
16 Tel: (202) 307-8704 | Fax: (202) 305-7000  
17 alexander.j.halaska@usdoj.gov

18 *Counsel for Defendants*

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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(San Diego)**

AL OTRO LADO, Inc., *et al.*,

*Plaintiffs,*

v.

Chad F. WOLF, Acting Secretary of  
Homeland Security, in his official  
capacity, *et al.*,

*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 37**

[Redacted Public Version]

**From:** TAMAYO, ENRIQUE S  
**Sent:** Sunday, July 23, 2017 1:29 PM  
**To:** CALONDER, DANIEL; DONNELLY, STEVEN J; MEJIA, LUIS A; VAQUERO, ROBERTO  
**Subject:** FW: SWB Metering.pptx  
**Attachments:** SWB Metering.pptx

FYSA – Metering powerpoint to EAC.

---

**From:** CAMPOS, GRETA R  
**Sent:** Friday, November 18, 2016 8:55 AM  
**To:** GOOD, BEVERLY <BEVERLY.GOOD@cbp.dhs.gov>  
**Cc:** CAMPBELL, CARL S <CARL.S.CAMPBELL@cbp.dhs.gov>; TAMAYO, ENRIQUE S <ENRIQUE.S.TAMAYO@CBP.DHS.GOV>  
**Subject:** FW: SWB Metering.pptx

XD,

FYSA – Metering is a hot topic right now. Lots of international political pressure, and some of it is focused on El Paso and Hidalgo because they are turning people away at the port on US soil. Enrique is working with the port to address.

Greta R. Campos  
Acting Director, Field Programs  
Office of Field Operations  
U.S. Customs and Border Protection  
[REDACTED]

---

**From:** TAMAYO, ENRIQUE S  
**Sent:** Friday, November 18, 2016 8:03 AM  
**To:** Owen, Todd C (AC OEO) [REDACTED]; WAGNER, JOHN P [REDACTED]  
**Cc:** CAMPOS, GRETA R [REDACTED]; CHAVEZ, GLORIA I [REDACTED]  
**Subject:** FW: SWB Metering.pptx

EAC,

Attached are the Southwest Border metering slides and responses from each of the field offices.

Enrique

---

**From:** VAQUERO, ROBERTO  
**Sent:** Friday, November 18, 2016 7:40 AM  
**To:** TAMAYO, ENRIQUE S <[ENRIQUE.S.TAMAYO@CBP.DHS.GOV](mailto:ENRIQUE.S.TAMAYO@CBP.DHS.GOV)>  
**Subject:** SWB Metering.pptx

See the attached PPT regarding SW land border POEs.

Robert Vaquero  
Supervisory Program Manager  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection  
Office: [REDACTED]  
Mobile: [REDACTED]  
Email: [REDACTED]

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18 *Counsel for Defendants*

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**UNITED STATES DISTRICT COURT  
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Homeland Security, in his official  
capacity, *et al.*,

*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 38**

[Redacted Public Version]

**From:** MCALEENAN, KEVIN K  
**Sent:** Friday, November 18, 2016 8:49 AM  
**To:** Owen, Todd C (AC OFO)  
**CC:** WAGNER, JOHN P  
**Subject:** RE: SWB Metering.pptx

Thank you. El Paso seems to be the interagency focus, so if I could get that estimate in the next 20 mins, I would appreciate it very much.

---

**From:** Owen, Todd C (AC OFO)  
**Sent:** Friday, November 18, 2016 8:43:13 AM  
**To:** MCALEENAN, KEVIN K  
**Cc:** WAGNER, JOHN P  
**Subject:** RE: SWB Metering.pptx

Deputy,

Hard to say. In El Paso, they keep a log with names and appointment times as they turn them away, so we might be able to get a sense of the backlog there. In other locations, especially So Cal and San Luis, the migrants are staying at the shelters [REDACTED] Hard to know the volume in the shelters but we'll see if we can find it out.

I'm sure someone already raised this, but we need to watch and see if apprehensions go up between the ports as a result of the metering and people not wanting to wait.

Also, Hidalgo may be turning folks away after they reach US soil. We will address that this am and have the officers push back to the actual boundary line on the bridge.

*Todd C. Owen  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs & Border Protection*

---

**From:** MCALEENAN, KEVIN K  
**Sent:** Friday, November 18, 2016 8:26 AM  
**To:** Owen, Todd C (AC OFO) <[REDACTED]>  
**Cc:** WAGNER, JOHN P <[REDACTED]>  
**Subject:** RE: SWB Metering.pptx

EAC,  
Thank you. Any ballpark on the numbers "turned away"? That seems to be the focus.  
KM

---

**From:** Owen, Todd C (AC OFO)  
**Sent:** Friday, November 18, 2016 8:09:14 AM  
**To:** MCALEENAN, KEVIN K  
**Cc:** WAGNER, JOHN P  
**Subject:** FW: SWB Metering.pptx

DP

Outside of El Paso, process works smoothly because of the infrastructure and turnstiles which give us control before they reach US soil.

*Todd C. Owen  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs & Border Protection*

---

**From:** TAMAYO, ENRIQUE S  
**Sent:** Friday, November 18, 2016 8:03 AM  
**To:** Owen, Todd C (AC OFO) <[REDACTED]>; WAGNER, JOHN P <[REDACTED]>  
**Cc:** CAMPOS, GRETA R <[REDACTED]>; CHAVEZ, GLORIA I <[REDACTED]>  
**Subject:** FW: SWB Metering.pptx

EAC,

Attached are the Southwest Border metering slides and responses from each of the field offices.

Enrique

---

**From:** VAQUERO, ROBERTO

**Sent:** Friday, November 18, 2016 7:40 AM

**To:** TAMAYO, ENRIQUE S <[REDACTED]>

**Subject:** SWB Metering.pptx

See the attached PPT regarding SW land border POEs.

Robert Vaquero

Supervisory Program Manager

Admissibility and Passenger Programs

Office of Field Operations

U.S. Customs and Border Protection

Office: [REDACTED]

Mobile: [REDACTED]

Email: [REDACTED]

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17 alexander.j.halaska@usdoj.gov

*Counsel for Defendants*

18 **UNITED STATES DISTRICT COURT**  
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**  
20 **(San Diego)**

21 AL OTRO LADO, Inc., *et al.*,

22 *Plaintiffs,*

23 v.

24 Chad F. WOLF, Acting Secretary of  
25 Homeland Security, in his official  
26 capacity, *et al.*,

27 *Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 42**

[Redacted Public Version]

**From:** FLORES, PETE ROMERO

**Sent:** Thursday, December 8, 2016 7:32 PM

**To:** AKI, SIDNEY K; HERNANDEZ, ROSA E; SNYDER, WILLIAM P; SILVA, CARLOS NMI; SALAZAR, DAVID A; SARRASIN, DAVID A; ARMIJO, JOHNNY L; WILSON, LAURA; RAMIREZ, ELLEN

**Subject:** FW: CBP Migration CAT - COB 12/8/2016

FYSA

Pete Flores

Director, Field Operations

San Diego Field Office

U.S. Customs and Border Protection

Work Phone: 619-645-6622

Fax: 619-645-6644

---

**From:** CHAVEZ, GLORIA I

**Sent:** Thursday, December 08, 2016 1:47 PM

**To:**

**Subject:** RE: CBP Migration CAT - COB 12/8/2016

Deputy Commissioner and all – Please see the CBP Migration Crisis Action Team (CAT) “end of day” report for your situational awareness.

**CBP CAT HIGHLIGHTS:**

- The Tornillo, TX, facility reported 133 detainees with four operational Pods.
- Met with PDO and CRCL staffs to discuss CBP’s temporary holding facilities capabilities.
- Held discussions with OPA to finalize CBP’s new public facing website that will display FY17 statistics on Family Units, Unaccompanied Minors, Haitians, and Cubans.

**J1-ADMINISTRATION:**

- No Updates.

**J2-INTELLIGENCE:**

- [REDACTED]

**J3-OPERATIONS:**

**Tornillo Updates:**

- There is a total of 133 migrants at the Tornillo, TX, facility.
- The four Tornillo, TX facility pods are operational.
- Medicine dispensing MOU is pending revisions.
- Leadership met with Guatemalan Consulate and meeting was very positive.
- Temperature is maintained at 75 degrees in the pods (comfortable setting)

**Donna Updates:**

- Finalizing the Donna, TX, facility’s repairs including: fencing, door, and TV installations, painting, IT connections, and general repairs.
- The Donna, TX, facility comprises of five pods and is scheduled for completion on December 8, 2016 with operations tentatively scheduled for December 9, 2016.
- Leadership met with Honduran, Mexican and Guatemalan Consulates. Meeting was very positive.
- Leadership met with ACLU and provided a tour of the facility.
- CBP supervisors received an operations brief and then toured the Donna Facility.
- Facility leadership located a local clinic that accepts MEDPAR.

**J4-LOGISTICS:**

- No Updates.

**J5-PLANNING:**

- No Updates.

**J6-COMMUNICATIONS:**

- Completed a successful presentation on CBP’s holding facilities capabilities that included the PDO and Civil Rights Civil Liberties (CRCL) staffs.

**J7 – TRAINING:**

- No Updates.

**J-8 - FINANCE:**

- Contract extensions deadlines for both holding facilities are due (Tornillo - 12/17 and Donna - 12/23).

**J-9 - LIAISON:**

- The total number of ICE/ERO transfers processed within the last 24 hours is [REDACTED]
- ICE/ERO will repatriate two flights of [REDACTED] Haitians weekly during week 12/04 to 12/10 and two flights of [REDACTED] Haitians during week of 12/11 to 12/17.
- NGOs who toured the Donna facility were pleased with the amenities being provided to those in custody and no real issues were identified at the time.
- Congressional staffers visited the Donna facility and were satisfied with the visit.

Total	Demographic	App's / Inadmissibles (Previous Day)	Currently in Custody
CBP Southwest Border	UAC	311	588
	FMUA	665	1432
	Single Adults	1194	1703
	Total App's	2170	3715

Total	Demographic	Apprehensions (Previous Day)	Currently in Custody
USBP Southwest Border	UAC	266	534
	FMUA	544	1314
	Single Adults	864	1226
	Total App's	1674	3074

Total	Demographic	Inadmissibles (Previous Day)	Currently in Custody
OFO Southwest Border	UAC	45	46
	FMUA*	121	118
	Singles	338	477
	Total Subjects	496	641
	Total Haitians	68	315

Regards,  
 Gloria I. Chavez  
 Commander  
 Crisis Action Team  
 U.S. Customs and Border Protection  
 1300 Pennsylvania Avenue, Wash. D.C.  
 [REDACTED] (O)  
 [REDACTED] (C)

1 JEFFREY BOSSERT CLARK  
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3 Civil Division  
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18 *Counsel for Defendants*

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**UNITED STATES DISTRICT COURT  
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**DEFENDANTS' EXHIBIT 46**

Official website of the Department of Homeland Security



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(<https://www.youtube.com/user/customsborderprotect>)



U.S. Customs and  
Border Protection

(/)

# Southwest Border Inadmissibles by Field Office FY2018

Southwest Border Unaccompanied Alien Children (0-17 yr old) Inadmissibles

Comparisons below reflect Fiscal Year 2018 compared to Fiscal Year 2017.

Unaccompanied Alien Children			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
El Paso	2,566	2,847	11%
Laredo	2,294	2,163	-6%
San Diego	1,208	1,767	46%
Tucson	1,465	1,847	26%
<b>Field Ops</b>			
<b>Southwest Border</b>	7,533	8,624	14%
<b>Total</b>			

## Southwest Border Family Unit Inadmissibles\*<sup>1</sup>

Numbers below reflect Fiscal Year 2018 compared to Fiscal Year 2017.

Family Units			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
El Paso	8,361	14,089	69%
Laredo	11,558	13,612	18%
San Diego	7,049	15,772	124%

Family Units			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
Tucson	6,956	10,428	50%
Field Operations Southwest Border Total	33,924	53,901	59%

## Unaccompanied Alien Children Inadmissibles by Fiscal Year

Numbers below reflect totals for Fiscal Years 2017 and FY 2018

Unaccompanied Alien Children by Country		
Country	FY 2017	FY 2018
El Salvador	1,721	833
Guatemala	2,829	3,691
Honduras	1,173	1,655
Mexico	1,556	2,210

## Family Unit Inadmissibles by Fiscal Year<sup>1</sup>

Numbers below reflect the total for FY 2017 and FY 2018

Family Unit by Country		
Country	FY 2017	FY 2018
El Salvador	4,577	3,738
Guatemala	6,789	12,185
Honduras	4,246	8,327
Mexico	10,628	21,411

**\*Note:** (Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) deemed inadmissible with a family member by the Office of Field Operations.)

<sup>1</sup> **Note:**Field Operations only started collecting Family Unit numbers as of March 2016

## Cuban Inadmissibles

U.S. Customs and Border Protection maintains a robust posture regarding the enforcement of our immigration laws along the nation's borders and coastal areas. We continue to promote safe, legal and orderly migration from Cuba under our Migration Accords and deter dangerous and unlawful migration from Cuba.

\*Effective January 12, 2017, the United States ended the special parole policy, also known as the “wet-foot/dry-foot” policy, for Cuban migrants that has been in place since the mid-1990s. Since then, Cuban nationals who attempt to illegally enter the United States are subject to removal, consistent with our enforcement priorities. These actions are part of the ongoing normalization of relations between the governments of the United States and Cuba, and reflect a commitment to have a broader immigration policy in which we treat people from different countries consistently.

Numbers below reflect totals for Fiscal Years 2012-2017, FY 2018

Cuban Inadmissibles							
Field Office	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
El Paso	154	219	415	685	5,018	340	394
Laredo	9,429	12,384	15,333	26,181	34,658	14,275	6,533
San Diego	727	959	1,229	1,555	1,589	600	131
Tucson	86	142	132	221	258	168	21
<b>Southwest Border Totals</b>	<b>10,396</b>	<b>13,704</b>	<b>17,109</b>	<b>28,642</b>	<b>41,523</b>	<b>15,383</b>	<b>7,079</b>

## Haitian Inadmissibles

The number of Haitian inadmissibles arriving at ports of entry has decreased dramatically, with a decline of 97 percent compared to last year, attributable to the end of Temporary Protected Status in November 2017.

Numbers below reflect totals for Fiscal Years 2012-2017, FY 2018

Haitian Inadmissibles							
Field Office	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
El Paso	0	0	1	0	2	18	0
Laredo	1	1	6	1	6	160	2
San Diego	821	921	477	333	6,377	8,057	294
Tucson	0	0	0	0	39	960	1
<b>Southwest Border Totals</b>	<b>822</b>	<b>922</b>	<b>484</b>	<b>334</b>	<b>6,424</b>	<b>9,195</b>	<b>297</b>

## Southwest Border Inadmissibles Fiscal Year 2018 - By Month

FY18 Totals by Field Office		October	November	December	January		
February	March	April	May	June	July	August	September

	FMUA	UAC	Total Inadmissibles
Field Offices	FY 2018 JAN	FY 2018 JAN	FY 2018 JAN
El Paso	1,125	264	1,963
Laredo	1,086	166	4,035
San Diego	1,101	122	2,600
Tucson	795	168	1,332
<b>Total</b>	<b>4,107</b>	<b>720</b>	<b>9,930</b>

**Cuban and Haitian inadmissibles\***

	Cubans	Haitians
Field Offices	FY 2018 JAN	FY 2018 JAN
El Paso	2	0
Laredo	336	0
San Diego	7	24
Tucson	2	0
<b>Total</b>	<b>347</b>	<b>24</b>

\*Note:Cuban and Haitian inadmissibles are a subset of the Total Southwest Border Inadmissibles data above

[Back to Southwest Border Migration \(/newsroom/stats/sw-border-migration\)](/newsroom/stats/sw-border-migration)

**Last modified:** October 23, 2018

**Tags:** Statistics, Port Security, Unaccompanied Alien Children (UAC)



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Case No. 3:17-cv-02366-BAS-KSC


**DEFENDANTS' EXHIBIT 47**





Official website of the Department of Homeland Security



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

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U.S. Customs and Border Protection


[\(https://public.govdelivery.com/accounts/USDHSCBP/subscriber/new\)](https://public.govdelivery.com/accounts/USDHSCBP/subscriber/new)

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Southwest Border Unaccompanied Alien Children (0-17 yr old) Inadmissibles

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### Unaccompanied Alien Children Inadmissibles by Fiscal Year

Numbers below reflect totals for Fiscal Years 2017 and FY 2018

Unaccompanied Alien Children by Country		
Country	FY 2017	FY 2018
El Salvador	1,721	833
Guatemala	2,829	3,691
Honduras	1,173	1,655
Mexico	1,556	2,210

### Family Unit Inadmissibles by Fiscal Year<sup>1</sup>

Numbers below reflect the total for FY 2017 and FY 2018

Family Unit by Country		
Country	FY 2017	FY 2018
El Salvador	4,577	3,738
Guatemala	6,789	12,185
Honduras	4,246	8,327
Mexico	10,628	21,411

**\*Note:** (Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) deemed inadmissible with a family member by the Office of Field Operations.)

<sup>1</sup> **Note:**Field Operations only started collecting Family Unit numbers as of March 2016

### Cuban Inadmissibles

U.S. Customs and Border Protection maintains a robust posture regarding the enforcement of our immigration laws along the nation's borders and coastal areas. We continue to promote safe, legal and orderly migration from Cuba under our Migration Accords and deter dangerous and unlawful migration from Cuba.

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Numbers below reflect totals for Fiscal Years 2012-2017, FY 2018

Cuban Inadmissibles							
Field Office	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
El Paso	154	219	415	685	5,018	340	394
Laredo	9,429	12,384	15,333	26,181	34,658	14,275	6,533
San Diego	727	959	1,229	1,555	1,589	600	131
Tucson	86	142	132	221	258	168	21
<b>Southwest Border Totals</b>	<b>10,396</b>	<b>13,704</b>	<b>17,109</b>	<b>28,642</b>	<b>41,523</b>	<b>15,383</b>	<b>7,079</b>

## Haitian Inadmissibles

The number of Haitian inadmissibles arriving at ports of entry has decreased dramatically, with a decline of 97 percent compared to last year, attributable to the end of Temporary Protected Status in November 2017.

Numbers below reflect totals for Fiscal Years 2012-2017, FY 2018

Haitian Inadmissibles							
Field Office	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
El Paso	0	0	1	0	2	18	0
Laredo	1	1	6	1	6	160	2
San Diego	821	921	477	333	6,377	8,057	294
Tucson	0	0	0	0	39	960	1
<b>Southwest Border Totals</b>	<b>822</b>	<b>922</b>	<b>484</b>	<b>334</b>	<b>6,424</b>	<b>9,195</b>	<b>297</b>

## Southwest Border Inadmissibles Fiscal Year 2018 - By Month

FY18 Totals by Field Office		October	November	December	January		
February	March	April	May	June	July	August	September

	FMUA	UAC	Total Inadmissibles
Field Offices	FY 2018 FEB	FY 2018 FEB	FY 2018 FEB
El Paso	1,270	256	1,986
Laredo	1,062	167	3,785
San Diego	1,396	110	2,997
Tucson	776	115	1,317
Total	4,504	648	10,085

Cuban and Haitian inadmissibles\*

	Cubans	Haitians
Field Offices	FY 2018 FEB	FY 2018 FEB
El Paso	4	0
Laredo	405	0
San Diego	2	20
Tucson	1	0
Total	412	20

\*Note:Cuban and Haitian inadmissibles are a subset of the Total Southwest Border Inadmissibles data above

[Back to Southwest Border Migration \(/newsroom/stats/sw-border-migration/\)](/newsroom/stats/sw-border-migration/)

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**Tags:** Statistics, Port Security, Unaccompanied Alien Children (UAC)



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**UNITED STATES DISTRICT COURT  
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Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 48**

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U.S. Customs and  
Border Protection

(/)

# Southwest Border Inadmissibles by Field Office FY2018

## Southwest Border Unaccompanied Alien Children (0-17 yr old) Inadmissibles

Comparisons below reflect Fiscal Year 2018 compared to Fiscal Year 2017.

Unaccompanied Alien Children			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
El Paso	2,566	2,847	11%
Laredo	2,294	2,163	-6%
San Diego	1,208	1,767	46%
Tucson	1,465	1,847	26%
<b>Field Ops</b>			
<b>Southwest Border</b>	7,533	8,624	14%
<b>Total</b>			

## Southwest Border Family Unit Inadmissibles\*<sup>1</sup>

Numbers below reflect Fiscal Year 2018 compared to Fiscal Year 2017.

Family Units			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
El Paso	8,361	14,089	69%
Laredo	11,558	13,612	18%
San Diego	7,049	15,772	124%

Family Units			
Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
Tucson	6,956	10,428	50%
Field Operations Southwest Border Total	33,924	53,901	59%

### Unaccompanied Alien Children Inadmissibles by Fiscal Year

Numbers below reflect totals for Fiscal Years 2017 and FY 2018

Unaccompanied Alien Children by Country		
Country	FY 2017	FY 2018
El Salvador	1,721	833
Guatemala	2,829	3,691
Honduras	1,173	1,655
Mexico	1,556	2,210

### Family Unit Inadmissibles by Fiscal Year<sup>1</sup>

Numbers below reflect the total for FY 2017 and FY 2018

Family Unit by Country		
Country	FY 2017	FY 2018
El Salvador	4,577	3,738
Guatemala	6,789	12,185
Honduras	4,246	8,327
Mexico	10,628	21,411

**\*Note:** (Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) deemed inadmissible with a family member by the Office of Field Operations.)

<sup>1</sup> **Note:**Field Operations only started collecting Family Unit numbers as of March 2016

### Cuban Inadmissibles

U.S. Customs and Border Protection maintains a robust posture regarding the enforcement of our immigration laws along the nation's borders and coastal areas. We continue to promote safe, legal and orderly migration from Cuba under our Migration Accords and deter dangerous and unlawful migration from Cuba.

\*Effective January 12, 2017, the United States ended the special parole policy, also known as the “wet-foot/dry-foot” policy, for Cuban migrants that has been in place since the mid-1990s. Since then, Cuban nationals who attempt to illegally enter the United States are subject to removal, consistent with our enforcement priorities. These actions are part of the ongoing normalization of relations between the governments of the United States and Cuba, and reflect a commitment to have a broader immigration policy in which we treat people from different countries consistently.

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El Paso	154	219	415	685	5,018	340	394
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The number of Haitian inadmissibles arriving at ports of entry has decreased dramatically, with a decline of 97 percent compared to last year, attributable to the end of Temporary Protected Status in November 2017.

Numbers below reflect totals for Fiscal Years 2012-2017, FY 2018

Haitian Inadmissibles							
Field Office	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
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## Southwest Border Inadmissibles Fiscal Year 2018 - By Month

FY18 Totals by Field Office		October	November	December	January		
February	March	April	May	June	July	August	September

	FMUA	UAC	Total Inadmissibles
Field Offices	FY 2018 MAR	FY 2018 MAR	FY 2018 MAR
El Paso	1,709	397	2,691
Laredo	1,475	335	4,860
San Diego	1,674	208	3,770
Tucson	1,009	164	1,636
Total	5,867	1,104	12,957

Cuban and Haitian inadmissibles\*

	Cubans	Haitians
Field Offices	FY 2018 MAR	FY 2018 MAR
El Paso	8	0
Laredo	653	0
San Diego	14	20
Tucson	0	0
Total	675	20

\*Note:Cuban and Haitian inadmissibles are a subset of the Total Southwest Border Inadmissibles data above

[Back to Southwest Border Migration \(/newsroom/stats/sw-border-migration\)](/newsroom/stats/sw-border-migration)

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**DEFENDANTS' EXHIBIT 49**






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[\(https://www.youtube.com/user/customsborderprotect\)](https://www.youtube.com/user/customsborderprotect)



# Southwest Border Inadmissibles by Field Office FY2018

Southwest Border Unaccompanied Alien Children (0-17 yr old) Inadmissibles

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Field Offices	FY 2017	FY 2018	% Change FY17 to FY18
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Total			

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## Southwest Border Inadmissibles Fiscal Year 2018 - By Month

FY18 Totals by Field Office		October	November	December	January		
February	March	April	May	June	July	August	September

	FMUA	UAC	Total Inadmissibles
Field Offices	FY 2018 APR	FY 2018 APR	FY 2018 APR
El Paso	1,927	388	2,888
Laredo	1,505	312	4,681
San Diego	1,801	152	3,666
Tucson	1,069	195	1,690
Total	6,302	1,047	12,925

Cuban and Haitian inadmissibles\*

	Cubans	Haitians
Field Offices	FY 2018 APR	FY 2018 APR
El Paso	9	0
Laredo	616	0
San Diego	13	19
Tucson	2	0
Total	640	19

\*Note:Cuban and Haitian inadmissibles are a subset of the Total Southwest Border Inadmissibles data above

[Back to Southwest Border Migration \(/newsroom/stats/sw-border-migration/\)](/newsroom/stats/sw-border-migration/)

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*Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**DEFENDANTS' EXHIBIT 50**

[Redacted Public Version]

**From:** PROVENCIO, RAY  
**Sent:** Wednesday, April 4, 2018 11:34 AM  
**To:** MANCHA, HECTOR  
**Subject:** Cadence Calls - Supplemental Information

DFO,

A few bullets to supplement the TPs:

**Case processing team:**

- As a result of the increased CF claims, FAMUs and UACs, the Port has created 2 processing teams to place focus on processing without the added distraction of feeding, detention checks, cleaning, etc. As the increase in detainees occurs, humanitarian functions increase, which takes away from case processing. Additionally, with increasing the numbers of CBPOs focused on case processing, this also causes impacts to frontline functions and increased expenditures.

**Bus Pass:**

- The EPFO successfully negotiated a unique process with ERO. Only found in the Ursula combined processing center prior to the establishment of Operation bus pass... EPFO Ports now have DOs collocated at Ports of Entry, working alongside CBP Officers, to further movement of detainees. Without operation bus pass, Ports are reliant on NGOs and FRCs

**CDC:**

- Ports are engaging CDC, as appropriate, when encountering detainees with possible disease. The CDC has increased port engagement, to include an upcoming meet and greet for their new leadership

**Honduran Fraud:**

- [REDACTED]

**BP Facility:**

When detainee movement results in decreased detention space, EPFO personnel suspend housing at BP, Station 1, which allows for the reallocation of personnel to enforcement actions and/or the backfill of personnel conducting case processing/detainee management. The suspension of overflow space is a balancing act, with increased use when detainees are approaching capacity (i.e. anticipated to occur mostly on weekends).

*Ray Provencio*

Assistant Director of Field Operations  
Office of Field Operations – El Paso Field Office  
U.S. Customs and Border Protection  
Office: [REDACTED]

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**DEFENDANTS' EXHIBIT 51**

[Redacted Public Version]

From: HARRIS, RODNEY H  
Sent: Tuesday, April 3, 2018 1:14 PM  
To: LONGORIA, FRANK S  
Subject: RE: Leadership Cadence Call

Update on the operational environment – five minutes

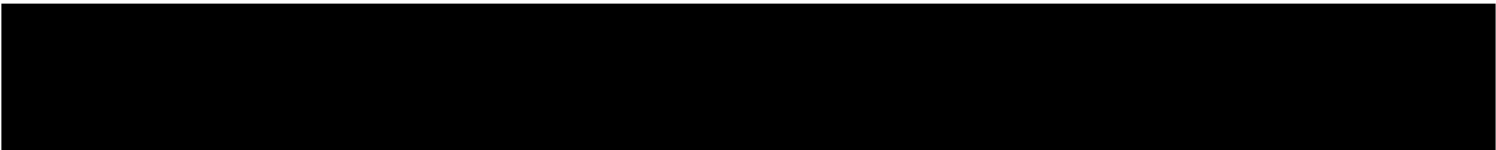
We’ve been monitoring the numbers and they have increased for the fourth week in a row. The greatest increase has been single adult credible fear cases. (What country has the highest number?)

218 to 378 = 73% increase (week to week)

ER/CFs in order are: Cuba, Honduras, Guatemala, El Salvador, Mexico

Hondurans are by far the greatest number of family units (41%).

There has been a significant shift of arriving aliens claiming credible fear to the smaller ports of entry, specifically Eagle Pass and Roma, which affect their processing and holding capacity. However, the situation is currently manageable and the neighboring ports of entry support as necessary.



Custody Count - (3/1/2018 - 3/31/2018)

Disposition Name : EXPEDITED REMOVAL-CREDIBLE FEAR (ERCF)

Country of Citizenship / Location	BROWNVILLE, TX	DEL RIO, TX	EAGLE PASS, TX	FIDALGO, TX	LAREDO, TX	PROGRESO, TX	RIO GRANDE CITY, TX	ROMA, TX	Total
ANGOLA	1	0	0	0	1	0	0	0	2
BANGLADESH	0	0	0	1	0	0	0	0	1
BRAZIL	20	0	4	2	0	0	0	2	24
CAMEROON	0	0	0	0	1	0	0	0	1
CONGO	1	0	0	1	0	0	0	0	2
CONGO - DEMOCRATIC REPUBLIC	2	0	0	0	12	0	0	0	19
COTE D'IVOIRE	0	0	0	0	1	0	0	0	1
CUBA	18	0	0	202	202	0	0	0	593
ECUADOR	0	0	0	2	0	0	0	0	2
EL SALVADOR	4	1	6	48	15	0	10	21	115
ERITREA	1	0	0	14	0	0	0	0	15
ETHIOPIA	0	0	0	2	0	0	0	0	2
GEORGIA (OLD CODE)	0	0	0	0	2	0	0	0	2
GUATEMALA	12	0	8	46	4	0	2	50	125
GUINEA	0	0	0	0	1	0	0	0	1
HONDURAS	18	2	50	92	53	8	12	23	321
IRAQ	0	0	0	0	1	0	0	0	1
MEXICO	0	2	18	32	41	2	0	0	105
NICARAGUA	0	0	0	1	0	0	0	0	1
PARAGUAY	0	0	0	1	0	0	0	0	1
PERU	0	0	0	0	0	0	0	2	7
ROMANIA	4	0	0	2	0	0	0	1	9
RUSSIA	0	0	0	0	2	0	0	0	2
SENEGAL	2	0	0	0	0	0	0	0	2
SYRIA	0	0	0	0	2	0	0	0	2
TURKEY	1	0	0	0	0	0	0	0	1
UZBEKISTAN	0	0	0	0	1	0	0	0	1
VENEZUELA	2	0	0	2	2	0	0	1	9
Total:	103	10	31	544	421	7	34	167	1,377

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**DEFENDANTS' EXHIBIT 52**

[Redacted Public Version]

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**From:** CHAVEZ, VERONICA J  
**Sent:** Wednesday, April 18, 2018 6:30 PM  
**To:** HOOD, ROBERT W  
**Cc:** AKI, SIDNEY K; MARIN, MARIZA  
**Subject:** FW: Emergency AEU support  
**Attachments:** FLEX Unit.xlsx

Sir,

The 8 passenger officers have been assigned to AEU to assist with case processing through Monday, April 23<sup>rd</sup>. NTEU has been advised and is on board.

Thank you,

Veronica

---

**From:** CHAVEZ, VERONICA J  
**Sent:** Wednesday, April 18, 2018 3:28 PM  
**To:** guillermo.barragan@nteu105.org; 'Ken's NTEU' <kenneth.keller@nteu105.org>; jorge.llanos@nteu105.org  
**Subject:** Emergency AEU support

Good Afternoon,

We are in need of your assistance. The Port experienced a surge in asylum seekers yesterday (187 applicants), which brought us to max capacity (detainees). We just received notification that another 120 asylum seekers are at El Chaparral awaiting to make entry.

We need to provide support to AEU for case processing.

Attached is a list of Passenger Flex capable officers. Out of the entire list only 2 are qualified to process cases:

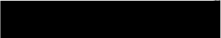
1. Beatriz Honorato (FLEX mids)
2. Melissa Cange (FLEX mids)

Due to the emergent need, we will not have enough time to announce and solicit for volunteers. We will need to temporarily pull the following 6 passenger officers to AEU for case processing:

1. Yolanda Pedraza (temp pull mids)
2. Abel Aldape (temp pull days)
3. Ryan Maddela (temp pull nights)
4. Jazmin Garibay (temp pull nights)
5. Francisco Orellna (temp pull nights)
6. Thell Langley (temp pull nights)

The eight officers (2 flex and 6 temporary pull) have been contacted and have agreed to the temporary detail. They will be placed in AEU through Monday, April 23<sup>rd</sup> on their same shift and RDOs.

Please advise if you require any additional information. Your assistance and understanding is greatly appreciated.

*Veronica J. Chavez*  
*Watch Commander*  
*Employee Services Department*  
*San Ysidro Port of Entry*  


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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 10 IN SUPPORT OF  
PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT**

**REDACTED VERSION**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

-----x

AL OTRO LADO, INC., et al., :

Plaintiffs, : Case No.:

vs. : 17-cv-02366-BAS-KSC

KEVIN K. MCALEENAN, et al., :

Defendants. :

-----x

DEPOSITION MARKED CONFIDENTIAL

DEPOSITION OF TODD OWEN

Washington, D.C.

Friday, December 13, 2019

9:40 a.m.

Job No.: 529549

Pages: 1 - 332

Reported by: Elizabeth Mingione, RPR

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Deposition of TODD OWEN, held at the offices

3

of Mayer Brown, LLP, 1999 K Sreet, Northwest,

4

Washington, D.C., commencing at 9:40 a.m., Friday,

5

December 13, 2019, and taken down stenographically by

6

Elizabeth Mingione, Registered Professional Reporter

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and Notary Public for the Commonwealth of Virginia.

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21 (Appearances, Continued)

22

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3 Rameez Burney

4 Karolina Walters, American Immigration Council

5 Kristine King

6 Matthew Fenn (via phone, as indicated)

7

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1 C O N T E N T S

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14 (Exhibits Attached to Transcript,

15 Except for Nos. 32, 36, 37 TBD)

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1 P R O C E E D I N G S

2 Whereupon,

3 TODD OWEN,

4 having been first duly sworn was

5 examined and testified as follows:

6 - - -

7 EXAMINATION CONDUCTED

8 BY MR. MEDLOCK:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. Can you please state and spell your name  
12 for the record.

13 A. My name is Todd Owen, T-O-D-D, O-W-E-N.

14 Q. Have you ever gone by any other names, sir?

15 A. No.

16 Q. Are you presently employed?

17 A. Yes.

18 Q. Where are you employed?

19 A. With U.S. Customs and Border Protection,  
20 Washington, D.C.

21 Q. What is your -- if I refer to U.S. Customs  
22 and Border Protection as CBP, you'll understand that?

1 (A document was marked as Deposition  
2 Exhibit Number 23.)

3 - - -

4 BY MR. MEDLOCK:

5 Q. All right, sir. I've marked as Exhibit 23  
6 a one-page document. Again this is probably one you  
7 are familiar with. That was previously marked in  
8 another deposition in this matter as Exhibit 3.

9 Can you please take a moment to review  
10 Exhibit 23, and let know when you are done doing so.

11 MS. SHINNERS: Exhibit 3?

12 MR. MEDLOCK: Well, I marked it as 23 as  
13 well.

14 MS. SHINNERS: Okay.

15 THE WITNESS: Okay.

16 BY MR. MEDLOCK:

17 Q. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 A. [REDACTED]

21 Q. [REDACTED]

22 [REDACTED]

1 A. Yes.

2 Q. You wrote the memorandum shown in Exhibit  
3 23 as part of your job at CBP, correct?

4 A. Well, my executive director for  
5 Admissibility Programs would have written the initial  
6 draft. I would have commented on the draft, and then  
7 I would have signed the official guidance that went  
8 out, so --

9 Q. Who's the individual that would have  
10 drafted this?

11 A. Todd Hoffman.

12 Q. And would Mr. Hoffman have received any  
13 input from any of his reports, do you know?

14 A. I don't know.

15 Q. Do you know if Ryan Koseor had any input  
16 into this guidance?

17 A. Ryan Koseor does not work for Mr. Hoffman,  
18 so I would doubt it.

19 Q. Do you know if anybody else at CBP had any  
20 input into this metering guidance?

21 A. Mr. Hoffman's director deals with all  
22 immigration matters. So subject matters on his staff

1 may very well help contribute to this.

2 Q. But you don't know one way or the other as  
3 you sit here today?

4 A. I don't know within his staff who helped  
5 draft this memo. No.

6 Q. So this memorandum was prepared for your  
7 signature; is that right?

8 A. Yes, it was.

9 Q. And you had the opportunity to give  
10 feedback on a draft of this memorandum?

11 A. I believe so. Yes.

12 Q. Do you recall when in relation to April 27,  
13 2018, you would have received the draft?

14 A. No.

15 Q. Do you recall whether you actually had any  
16 edits to this memorandum?

17 A. I don't recall.

18 Q. You may have, you may not have. You just  
19 don't recall?

20 A. I sign a lot of memos. I don't recall on  
21 this specific one I had comments on the draft or not.

22 Q. Do you recall how long you spent reviewing

1 this memo?

2 A. No, I do not.

3 Q. How long would you typically spend  
4 reviewing a one-page memo?

5 A. I mean, not very long. I mean, I would  
6 look to make sure that the guidance I felt was clear  
7 from this.

8 Q. Okay.

9 A. So not very long.

10 Q. When you say not very long, can you give me  
11 an estimate?

12 A. You know maybe five or ten minutes.

13 Q. So --

14 A. Some documents I will review and let them  
15 sit and then come back to them and review them again  
16 with fresh eyes at a later time. I mean, I don't  
17 recall this one specifically.

18 Q. Do you recall whether you reviewed this  
19 memorandum more than one time?

20 A. Yes.

21 Q. How many times did you review it?

22 A. Prior to its issuance or since then or --

1 Q. Prior to its issuance?

2 A. Prior to its issuance, I don't recall.

3 Q. You cite in this memorandum as part of your  
4 official duties as the EAC at CBP's Office of Field  
5 Operations; is that correct?

6 A. Yes.

7 Q. And you would have been knowledgeable about  
8 the contents of this memorandum at the time you signed  
9 it; is that right?

10 A. Yes.

11 Q. And you signed it on or about the date list  
12 on the memorandum, April 27, 2018; is that right?

13 A. Correct. On or about the date.

14 Q. Correct.

15 A. Because when the memos come to me, they  
16 don't have a date on them yet. And then when the  
17 executive secretaries issue it, within the next day or  
18 two that's when they date stamp it.

19 Q. Okay. And from reviewing this memorandum,  
20 other than the fact there's been a few redactions on  
21 it, to your knowledge is this memorandum accurate and  
22 correct?

1 A. Yes.

2 Q. And if I refer to this memorandum as the  
3 metering policy, you'll understand that?

4 A. Metering guidance. Yes, sir.

5 Q. Okay. It's your position, isn't it, sir,  
6 that the metering policy was motivated by capacity  
7 constraints at ports of entry on the Mexico border?

8 A. In 2016 in San Ysidro. Yes.

9 Q. Any other ports of entry where there were  
10 capacity constraints that you believe justified this  
11 memorandum?

12 A. The metering practice started in 2016. It  
13 started in San Ysidro. As other ports were  
14 overwhelmed with the volume of migrants, then we  
15 adopted the same practice across the southwest border  
16 as needed. That was throughout 2016.

17 In 2017, the migrant numbers subsided  
18 significantly. It was less necessary to implement  
19 metering throughout 2017. In 2018, the migrants  
20 numbers again started to increase, starting to reach a  
21 high point in the spring of 2018. That was what drove  
22 this message, this guidance across our southwest

1 border.

2 Q. At the time this memorandum was issued,  
3 what were the capacity -- what ports of entry were  
4 capacity constrained that you felt justified the  
5 issuance of this metering guidance?

6 A. I don't recall specifically what ports, but  
7 our primary gateway ports in the southwest border  
8 began to experience capacity issues again throughout  
9 2016. Those would be the major ports, the San  
10 Ysidros, the Calexico, Nogales, El Paso, Laredo,  
11 Hidalgo off and on, Brownsville off and on.

12 Q. And it's your assumption that those were  
13 the ports that were capacity constrained at that time;  
14 is that right?

15 A. At that time, but again we have 26 ports  
16 along the southwest border, 46 actual crossings. A  
17 port of entry may have multiple crossings. El Paso  
18 has four crossings. At some point because of the  
19 migrant situation which ebbs and flows, one of those  
20 bridges might have capacity while the other three do  
21 not. It really is a very fluid situation at the ports  
22 from port to port, day to day.

1 Q. Is it your position that the metering  
2 policy was not motivated by a desire to deter asylum  
3 seekers from entering the U.S.?

4 A. The policy was not desired to deter  
5 migrants from entering the U.S. No, it was not.

6 Q. And there was no communication that went to  
7 any field office or port director that -- from you,  
8 that would have led those field offices or port  
9 directors to believe that the metering policy should  
10 be used to deter asylum seekers; is that right?

11 A. The metering policy, which again began in  
12 2016, was used to address the capacity when we were  
13 having large numbers of volumes.

14 Q. And that's it?

15 A. That's the reason we do the metering in the  
16 ports of entry.

17 Q. There's no other reason?

18 A. No other reason.

19 Q. So I shouldn't see any e-mails or  
20 correspondence that would indicate there was another  
21 reason; is that right?

22 A. I can't speak for the whole agency.

1 Q. Okay. But you would be surprised to see  
2 that, wouldn't you?

3 A. This is the official guidance that I issued  
4 to the directors to cascade down through their  
5 leadership. This is why we do metering, because of  
6 the operational necessity based on the capacity at the  
7 ports.

8 Q. Okay. So there shouldn't be any port  
9 director or CBP officer who would believe that there  
10 was a policy to deter asylum seekers; is that right?

11 A. If they are following the April 2018 memo,  
12 they should not believe there's any other reason.

13 Q. Okay. You mentioned that in 2017 the  
14 migrant numbers went down; is that right?

15 A. Correct.

16 Q. Isn't it the case that some ports of entry  
17 continued to meter, even though the number of migrants  
18 went down?

19 A. The number of migrants went down compared  
20 th 2016. We had 154,000 inadmissibles in 2016. We  
21 had 111,000 inadmissibles in 2017.

22 So while the numbers did go down somewhat,

1     there were still large numbers of migrants seeking  
2     entry into the country, primarily through the gateway  
3     land borders, which there would then be a need to  
4     meter, as the operational needs dictated.

5           Q.     So the answer to my question is yes, there  
6     was metering that occurred in 20 --

7           A.     In 2017.   Yes.

8           Q.     Okay.   And metering occurred in 2018 as  
9     well; is that right?

10          A.     Yes.

11          Q.     And 2019 it still occurs.

12          A.     Still occurs.

13          Q.     The metering policy did have a deterrent  
14     effect though, didn't it?

15                   MS. SHINNERS:   Objection argumentative.

16     You can answer.

17          A.     I don't believe it had a deterrent effect.  
18     When you look at the number of migrants that have come  
19     in and sought refuge at the ports of entry, the flows  
20     -- there have been ebbs and flows as we typically see.  
21     But again, last year 126,000 migrants came in and  
22     sough refuge; 124,000 the year before.   So I don't

1           A.       As far as I can recall. I don't have the  
2       exact date.

3           Q.       So best recollection would be Friday the  
4       6th or Monday the 9th?

5           A.       Best recollection maybe a little before the  
6       6th. I'm trying to think with the Thanksgiving, it  
7       was -- it was within the last, you know, 10 days  
8       maybe.

9                   MR. MEDLOCK: Okay. All right. I have no  
10       further questions at this time, sir.

11                  THE WITNESS: Okay. Thank you.

12                  MS. SHINNERS: Defendant's counsel would  
13       like to do redirect. We'll take a quick break.

14                               - - -

15                               (Recessed at 4:10 p.m.)

16                               (Reconvened at 4:20 p.m.)

17                               - - -

18                               EXAMINATION CONDUCTED

19                  BY MS. SHINNERS:

20           Q.       Mr. Owen, I'd like to ask you if -- to the  
21       extent of your recollection, if you could explain to  
22       me the sequence of events in 2016 in San Ysidro in

1 terms of accommodations that were made at the San  
2 Ysidro port with respect to the Haitian migrant surge?

3 MR. LEV: Objection. Vague. I don't know  
4 what accommodations means.

5 Q. Do you understand my question?

6 A. I can talk about what processes we  
7 implemented to address the Haitians.

8 Q. That's fine.

9 A. Okay. So, to put this in context, the  
10 migrants have undergone waves as they have come into  
11 the United States. In 2014, it was unaccompanied  
12 alien children. They were primarily entering between  
13 the ports, which is a border responsibility. It was  
14 not an OFO issue.

15 So we really did not start to engage with  
16 the high numbers of migrants until 2016. So that  
17 started in the early part of 2016 with the Haitians  
18 that were leaving Brazil. Historically, the  
19 earthquake Haiti, destruction in Haiti. Brazil opened  
20 their doors to the Haitians. They needed cheap labor  
21 to build the venues for the Olympics.

22 By 2015, those venues were built. They

1 canceled all of the Haitian work permits and directed  
2 the Haitians to leave. The Haitians did not go back  
3 to Haiti because Haiti was still in bad shape. They  
4 came up through the southern border and arrived in San  
5 Ysidro.

6 So at the start of 2006 is when we started  
7 to see all of these Haitians, which quickly began to  
8 overwhelm our detention and processing capabilities.  
9 The entire system was overwhelmed with the Haitians.  
10 ERO, who would remove the Haitians from our temporary  
11 detention, put them into permanent detention where it  
12 was also overwhelmed. So this is what started the  
13 metering.

14 So we needed to control the flow, because  
15 we simply had no more processing or holding capacity.  
16 What we did throughout 2016, and this started to  
17 spread with the Haitians as they went east into  
18 Calexico, into San Luis, Arizona, into Nogales,  
19 because this was our first dealing with such large  
20 numbers, we would start to convert conference space,  
21 training facilities room like this into temporary  
22 holding facilities.

1                   So they were not designed for holding  
2     individuals in detention, but because the numbers were  
3     so overwhelming us, we would convert space like this.  
4     And we had way too many people beyond our official  
5     detention capacity. Throughout 2006, the numbers  
6     started to increase across the entire southwest  
7     border, not just San Diego.

8                   And then they started becoming not just  
9     Haitians, but more family units as they were coming in  
10    through out 2016, which is why we then rolled out the  
11    metering across the southern border where it was  
12    needed operationally. We employed the same tactics at  
13    those ports that we would convert conference space and  
14    wherever we could make space to hold people.

15                  Again ERO who is supposed to take them from  
16    our temporary storage, temporary detention space to  
17    the permanent detention facilities to was overwhelmed  
18    as well.

19                  2017 came along, and the numbers came down  
20    to more manageable levels. We had less metering at  
21    that time. And we assessed what we did in '16 in  
22    terms of converting conference space and such into

1 holding people. And I really believed that in 2016,  
2 we got lucky when we had so many people in our  
3 facilities, that there was not a fire, that there was  
4 not acts of violence, that there was not disease that  
5 would spread through the community.

6 So when '17 came along and we assessed  
7 that, we said we would not do that again. We would  
8 only hold to what we had the physical capacity and the  
9 operational capacity to do. When 2018 came along and  
10 the migrant numbers again started to increase, that's  
11 when we decided operationally to hold at the limit  
12 line to have folks remain in Mexico as opposed to in  
13 our non-official detention space, you know, creating  
14 unsafe conditions, not allowing people to remain at  
15 the corridors in the open areas of the ports waiting  
16 to be processed.

17 So that is why we switched from holding at  
18 the doors of the port to holding at the limit line '16  
19 versus '18.

20 Q. Okay. A couple times in your response you  
21 mentioned in 2006. Were you referring to 2016?

22 A. Oh, 2016. Yes. Sorry.

1           Q.     You also mentioned that -- I believe you  
2     mentioned that ports of entry were receiving family  
3     units.

4                     Can you explain the impact, if any, of  
5     receiving more family units through ports of entry, of  
6     the receipt of more family units in ports of entry on  
7     the capacity of the port of entry?

8           A.     Yes.   ports of entry are not designed for  
9     long-term holdings.   Our detention cells are like jail  
10    cells in a police station.   They are intended for  
11    short-term detention, primarily of single adults,  
12    while we are waiting to turn them over to another  
13    agency or to, you know, immigration and customs  
14    enforcement, whatnot.

15                    So as the composition of the migrants  
16    started to change throughout 2016 and we started to  
17    receive more and more family units, our space is not  
18    designed for family units.   You look at a lot of our  
19    ports, the cells are very small.   Some are what we  
20    call wet cells, meaning they have toilets.   Some are  
21    not.

22                    So the increase in family units further

1     taxed our abilities to bring in large numbers of folks  
2     and hold them, because our cells were simply not  
3     designed to do that. We talked about the physical  
4     capacity and the operational capacity. If you take a  
5     place like Hidalgo that has four cells designed to  
6     hold 42 people, but only 3 of those cells has  
7     bathrooms. Okay. So that is our total physical  
8     capacity of 42.

9             When you start to factor in the operational  
10    considerations, the demographics of who has come  
11    across and filed a claim today. Right? So if you  
12    have a family unit, you have to put them in one cell.  
13    Another family unit comes in and they have scabies or  
14    lice. You can't put them in with the first family.  
15    You Would put them into a second cell.

16            If you had an adult male, he would not go  
17    in with the families and the children. He would go  
18    into a different cell. If you -- we have to separate  
19    individuals from different countries with different  
20    gang affiliations as notated through their tattoos,  
21    because they will not -- there will be trouble in the  
22    cells. So you have to separate those.

1           Anybody that we arrest, and we make 40,000  
2   arrests a year, they go into a cell separate from the  
3   migrants. The migrants are here for an administrative  
4   matter, if you will. Anyone that we arrest for a  
5   criminal matter goes into a separate cell by  
6   themselves. So you may have a physical capacity of  
7   42, but in this example you actually only have 7  
8   people in your cells, and you are a full capacity.

9           Q.     Thank you. Can you explain what impacts  
10   there might be on trade and travel, in general, at any  
11   port of entry, if resources are diverted from  
12   facilitating trade and travel?

13          A.     Okay.

14                MR. LEV: Objection. Calls for  
15   speculation.

16          A.     I do understand.

17          Q.     Just to clarify, I'm asking can you explain  
18   to your knowledge --

19          A.     This is confusing with you objecting. Do I  
20   look at you or do I look at her. Can I answer?

21          Q.     You may answer, but I'm going to go ahead  
22   and rephrase.

1           A.       Okay.

2           Q.       So can you explain, based on your knowledge  
3       and your experience, in general any impacts on trade  
4       and travel from -- if you divert resources, or if a  
5       port of entry diverts resources from the facilitation  
6       of trade or travel?

7                   MR. LEV:   Same objection.

8           A.       Okay.   From my knowledge, we prioritize our  
9       mission sets within the ports of entry along the  
10      guidance that we receive from the secretary.   So if we  
11      had to divert officers from the counter-terrorism  
12      mission, or if we had to divert officers to put more  
13      officers towards the processing of undocumented  
14      migrants, we would not pull them from the  
15      counter-terrorism mission.   We would not pull them  
16      from the narcotics intradiction mission.

17                   So the two missions that they would be  
18      pulled from, one would be the facilitation of lawful  
19      trade and travel.   So those are folks who have lawful  
20      documents to enter the country.   Most of the  
21      cross-border traffic on the southern border comes and  
22      goes with border crossing cards.

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 11 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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**From:** ROSSILLI, VONA M  
**Sent:** Sunday, May 29, 2016 8:31 PM  
**To:** SYS-OTM-MNGR; AVILA, EDWARD; CASTILLO, MOISES; CHAVEZ, VERONICA J; DELGADO, ALBERT F; FORD, STEPHEN C; HALL, TONY L (OFO CBS POE); KAPCZYNSKI, ROBERT A; MCCULLOCH, CHANTELE; MENDOZA, DANIEL; MILLER, CHRIS; RODRIGUEZ, CARLOS C; RODRIGUEZ, CARY; ROSSILLI, VONA M  
**CC:** HOOD, ROBERT W; MARIN, MARIZA; KIRKMAN, JOSEPH E; CARRILLO, SALLY R; MISENHELTER, JOSEPH  
**Subject:** FW: GOM transports from Shelters

Managers,

Due to the increased workload in AEU with regard to the Asylee line and the changes made to increase our intake and processing efforts, there have been some modifications that you need to be aware of. The Asylee line in the pedestrian building is not being used at this time, there is a line staged on the Mexican side which is where the people used to wait for permits. The Government of Mexico (GOM) is assisting with this increase, and has helped by setting up shelters in Tijuana to house those waiting to claim credible fear/asylum. The GOM officials will coordinate the transportation of those individuals from the shelters to the POE through our ILU Supervisor [REDACTED] who in turn calls the on duty AEU supervisor and advises that a group of Asylees (currently all are Haitian) will be transported to the port and provide us with an ETA. We should be coordinating the arrival of this group as they are to be taken into AEU intake immediately and not placed in the existing Asylee line, they've been in the shelters for multiple days at this point. I've asked the AEU managers if they can please notify the on duty WC and Operations Chief so that the Old Port personnel can be used to meet and accept the group being transported from the Mexican Shelters. At this time, we are not getting exact numbers from the Shelters, hopefully the information will be more precise as we move forward. It's very important that we are all on the same page with the intake and processing of people arriving and claiming credible fear/ asylum here at the port. Also to note\*, with these changes it will be important to continue to ensure that we are staffing the Old Port Limit Line to ensure that travelers have documents to try and catch those coming to seek credible fear/asylum are identified and directed appropriately at the onset if feasible.

Respectfully,

Vona Rossilli  
 Watch Commander, Passenger Ops  
 San Ysidro Port of Entry

[REDACTED] office  
 [REDACTED] mobile  
 [REDACTED]

---

**From:** HOOD, ROBERT W  
**Sent:** Sunday, May 29, 2016 2:46 PM  
**To:** PEREZ, MARICELA R [REDACTED]; CASTILLO, MOISES [REDACTED]; SYS AEU  
**Cc:** CHAVOYA, EDWARD R [REDACTED]; DELGADO, ALBERT F [REDACTED]; ROSSILLI, VONA M [REDACTED]  
**Subject:** RE: GOM transports from Shelters

Please bring them into Intake immediately. Since they are coming from the shelter we need to intake per our agreement with INAMI and the shelters.

Thank you

---

**From:** PEREZ, MARICELA R  
**Sent:** Sunday, May 29, 2016 2:36:33 PM  
**To:** CASTILLO, MOISES; SYS AEU  
**Cc:** CHAVOYA, EDWARD R; DELGADO, ALBERT F  
**Subject:** RE: GOM transports from Shelters

Alcon,

This group was brought to us around 1315 hours by GOM. They were escorted to the Asylum line by SCBPO Jerez and CBPO Lababi and AEU Supervisor was notified to take them into intake to begin processing as per DAPD Castillo.

Officer Lanier went out at 1420 hours to Pedestrian and there were no subjects in line.

Per the Pedestrian lead, they were taken back to Mexico by Night Shift officers.

---

**From:** CASTILLO, MOISES  
**Sent:** Sunday, May 29, 2016 12:00 PM  
**To:** SYS AEU [REDACTED]  
**Cc:** CHAVOYA, EDWARD R [REDACTED]; DELGADO, ALBERT F [REDACTED]

**Subject:** GOM transports from Shelters

ALCON,

From 1300-1330 GOM will transport a van full of males to the POE. Please meet them at the limit line and take custody of those individuals. Take them directly into intake and begin to process them.

Thank you,

"Vires et Honor"

Moises Castillo  
Watch Commander  
San Ysidro Port of Entry  
Special Response Team



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**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

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Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 12 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

**REDACTED VERSION**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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**EXHIBIT 22 TO**  
**PLAINTIFFS' MOTION FOR**  
**CLASS CERTIFICATION**

**AOL-DEF-00046740 to AOL-**  
**DEF-00046743**

***FILED UNDER SEAL***

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).





**UNHCR**  
United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

**UNHCR**  
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6 October 2016

René N. Hanna  
Deputy Chief of Staff (Policy)  
Office of the Commissioner  
US Customs and Border Protection  
1300 Pennsylvania Ave. NW, Ste. 4.4A  
Washington, DC 20229

**Re: UNHCR Site Visit to San Ysidro Port of Entry**

Dear Ms. Hanna,

On behalf of the United Nations High Commissioner for Refugees (UNHCR), I wish to thank you and your staff for facilitating the site visit for me and my colleagues, Ms. Katie Tobin, Assistant Protection Officer, and Mr. Jose Sieber Luz, Senior Protection Officer (Mexico), at the San Ysidro port of entry during the week of 12 September 2016. The warm reception and thorough briefings received by my colleagues from Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) during the visit were very much appreciated.

We were particularly impressed to see the sincere efforts made by the various DHS counterparts at the border to ensure access to the United States protection for vulnerable persons despite ongoing capacity challenges and increasing numbers of arrivals.

Kindly find enclosed a short report reflecting UNHCR's findings and recommendations from the site visit. These recommendations aim not only to address the situation of Haitians arriving at the San Ysidro port of entry, but also ensure that access to asylum for all individuals seeking protection at the US border is preserved.

We are aware that following our site visit, there has been a change in the US policy on returns to Haiti. UNHCR advises careful consideration in the implementation of this new policy, particularly in light of current events affecting stability in the country, such as the National Elections and Hurricane Matthew.

We remain available, of course, to discuss any aspects of the report and look forward to continued collaboration on this situation and other issues of mutual concern.



Kind regards,

Chiara Cardoletti-Carroll  
Deputy Regional Representative for  
the USA & Caribbean

CC: Serena Hoy, Senior Counsel, Office of the Deputy Secretary, DHS  
Jennifer Higgins, Deputy Chief of Staff, Office of the Deputy Secretary, DHS  
J. Ryan Hutton, Deputy Executive Director, Admissibility and Passenger Programs, CBP Office of Field Operations, DHS



United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **UNHCR Findings and Recommendations**

### **Site Visit to San Ysidro Port of Entry**

#### **12-14 September 2016**

#### **Background:**

In recent months, the Office of the United Nations High Commissioner for Refugees (UNHCR) has been closely following the secondary movement of Haitians from Brazil to the United States and is aware that nearly 5000 have arrived at the San Ysidro port of entry since May 2016, disrupting business as usual for US Customs & Border Protection (CBP) and other sub-agencies within the Department of Homeland Security (DHS) processing cases there.

On the week of 12 September 2016, the Department of Homeland Security (DHS) Headquarters facilitated a site visit for UNHCR to observe CBP and ICE operations at San Ysidro to better understand the challenges created by the recent influx. In its advisory capacity, UNHCR agreed to provide confidential comments to DHS following the visit. Below is a summary of UNHCR's key findings and recommendations.

#### **Findings:**

- The number of Haitian nationals arriving at San Ysidro port of entry is on the rise. UNHCR witnessed large numbers being processed while visiting the port of entry on 13 September. According to CBP, most Haitian nationals seeking admission at the San Ysidro port of entry are not seeking asylum. While some may fear return to Haiti, CBP reports that the majority are not expressing fear at the port of entry. Instead, they are expressing interest in working and/or reuniting with family in the US. This was also confirmed by the anecdotal accounts of a group of Haitian nationals in CBP custody. A large majority of the Haitians are coming from Brazil. Many had children born there.
- When it comes to the magnitude of the phenomenon, UNHCR understands there is a significant backlog of Haitian cases at the Tijuana side of the border. Furthermore, the Mexican press reports that at least 950 Haitians requested appointments at the San Ysidro port of entry on 12 September alone. According to NGOs, Haitians have also been arriving in increasing numbers at other ports of entry in recent weeks, such as Calexico, which is far less resourced than San Ysidro. In addition to adult males, there is an increasing number of women and children making the journey. This flow is expected to continue in the coming months.
- According to CBP, some of the key reasons underlining this rise in movements are: 1) declining opportunities in Brazil following the end of the Olympics; 2) the recent extension of Temporary Protected Status (TPS) by the Secretary of DHS which has been interpreted by many Haitians (and smugglers) as a signal that the current favorable treatment of Haitians will continue.
- Both CBP and ICE in Southern California are currently doing what they can with existing resources to process the Haitians expeditiously and humanely and maintain regular

processing of asylum-seekers. The agencies have also developed strong partnerships with local NGOs to manage release and family reunification. Due to the influx of Haitians, CBP's asylum processing capacity has however been significantly limited in recent months. At least half of CBP's staffing and space previously dedicated to processing asylum-seekers is now being used to process Haitian parole cases. A multi-year construction project is further limiting CBP's asylum processing capacity.

- Haitians and non-Mexican asylum-seekers, including those from Central America, continue to be subject to a metering system in Tijuana. The Mexican authorities (INM) are currently running the metering system in collaboration with CBP to issue appointments to be processed at the port of entry. Appointment dates are distributed every Monday, Wednesday and Friday. According to CBP, the wait time for an appointment is currently between four days and one week. NGOs in Mexico report that the wait time is considerably higher, averaging between 20 and 25 days. The metering system was developed in an effort to better manage the influx at the port of entry. However, by increasing reception and processing capacity at the port of entry and streamlining procedures, such a metering system could be avoided. Needless to say, a system that limits and regulates access to a border is inherently problematic, as it is vulnerable to abuse and exploitation. Just this week, UNHCR received reports of Haitians selling their appointments for 500 USD.
- On the positive side, according to CBP, Mexican asylum-seekers are no longer subject to the metering system at San Ysidro. However, INM and Mexican NGOs both report that a ceiling of 50 Mexican asylum-seekers per day persists. Mexican asylum-seekers turned away at the port of entry on a given day are seeking to stay at the same four migrant shelters as the Haitians. Many are also resorting to sleeping on the streets of Tijuana.
- Tijuana and San Diego are currently overwhelmed with the number of Haitians arriving and seeking shelter. In recent weeks, there has been increasing media coverage of what is being labeled a "humanitarian crisis." Images and stories of long lines in Tijuana featured prominently in the Mexican press this week. This vulnerable population requires urgent attention.

### **Recommendations:**

- Recognize the Haitian situation at San Ysidro as a surge and activate existing protocols for mass migration processing. To this end, UNHCR recommends that DHS open as a pilot project a temporary central processing center near the San Ysidro port of entry to offer reception and process Haitian parole claims. This is something that CBP is already positively considering following discussions with them at the border.
- Re-evaluate current protocols and streamline parole processing at the port of entry to significantly reduce the processing time for Haitian parolees and look for opportunities to curtail the process and omit any duplicative steps taken by CBP and ICE in light of the rising numbers.

- Urgently reconsider the use of a metering system (appointment system) for asylum-seekers and other vulnerable populations approaching the port of entry. This recommendation goes hand-in-hand with the recommendation for a central processing center.
- Invest in shelter capacity and other humanitarian aid in Tijuana and San Diego for the Haitian population. Take proactive steps to meet the needs of this vulnerable population.

**UNHCR Regional Office Washington**  
**6 October 2016**

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**FILED UNDER SEAL**

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SOUTHERN DISTRICT OF CALIFORNIA

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)  
)  
Kevin K. McAleenan, et )  
al., )  
)  
Defendants. )  
)

VIDEOTAPED VIRTUAL 30(B)(6) DEPOSITION OF  
U.S. CUSTOMS AND BORDER PROTECTION  
April 29, 2020  
Phoenix, Arizona

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Reported by Alisa Smith, AZ CR  
AZ Certified Reporter No. 50712

1 VIDEOTAPED VIRTUAL 30(b)(6) DEPOSITION OF  
2 U.S. CUSTOMS AND BORDER PROTECTION was taken on  
3 April 29, 2020, commencing at 8:41 a.m., with all  
4 parties appearing virtually at their respective  
5 offices, before Alisa Smith, a Certified Reporter of  
6 the State of Arizona.

7  
8 \* \* \*

9 COUNSEL APPEARING:

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Los Angeles, California 90071

13 olev@mayerbrown.com

14 By: Karolina Walters

AMERICAN IMMIGRATION COUNCIL

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18 By: Katherine J. Shinnars

By: Ari Nazarov

19 U.S. DEPARTMENT OF JUSTICE

Office of Immigration Litigation

20 950 Pennsylvania Avenue, NW

Washington, DC 20530

21 katherine.j.shinnars@usdoj.gov

22 Also present: Kendra Dobson, Videographer

Kevin Cranford, Exhibit Coordinator

23  
24  
25

1 I N D E X

2 WITNESS PAGE

3 MICHAEL HUMPHRIES

30 (b) (6) U.S. CUSTOMS AND BORDER PROTECTION

4

5 Examination by Mr. Lev 6

6 Examination by Ms. Walters 121

7 Examination by Ms. Shinnars 143

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9 \* \* \* \* \*

10 EXHIBITS MARKED

11 EXHIBIT DESCRIPTION PAGE

12 Exhibit 120 Exhibit 29 to Defendants' Opposition 29

13 Exhibit 128 E-mail attaching the MCAT Report 110

14 dated 8/24/2019

15 Exhibit 129 E-mail attaching the MCAT Report 112

16 dated 8/25/2019

17 Exhibit 130 E-mail attaching the MCAT Report 115

18 dated 6/17/2019

19 Exhibit 131 E-mail attaching the MCAT Report 117

20 dated 6/27/2019

21 Exhibit 132 E-mail attaching the MCAT Report 119

22 dated 4/25/2019

23 Exhibit 141 E-mail FW: Asylum Processing dated 71

24 4/2/2019

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4		11/22/2016	
5	Exhibit 143	E-mail RE SWB POE Holding Capacity	96
6		dated 10/26/2016	
7	Exhibit 152	E-mail FW San Luis FAMU surge dated	122
8		8/24/2016	
9	Exhibit 153	E-mails FW MCAAT Daily Report for	95
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12		custody... dated 11/16/2016	
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1 THE VIDEOGRAPHER: We are now on the  
2 record. This begins Media No. 1 in the deposition  
3 of Michael Humphries in the matter of Al Otro Lado  
4 v. Kevin K. McAleenan in the United States District  
5 Court, Southern District of California. Today is  
6 Wednesday, April 29th, 2020, and the time is  
7 8:41 a.m.

8 This is the -- this deposition is being  
9 taken completely by remote at the request of Mayer  
10 Brown, LLP - DC. The videographer is Kendra Dobson,  
11 and the court reporter is Alisa Smith, both of Magna  
12 Legal Services.

13 Will counsel and all parties present state  
14 their appearances and whom they represent?

15 MR. LEV: Good morning. This is Ori  
16 Lev from Mayer Brown. I represent the plaintiffs.

17 MS. WALTERS: Good morning. This is  
18 Karolina Walters with the American Immigration  
19 Council. I also represent the plaintiffs.

20 MS. SHINNERS: This is Katherine  
21 Shinnners of the U.S. Department of Justice, Office  
22 of Immigration Litigation, District court Section,  
23 and I represent the defendants in this matter.

24 MR. NAZAROV: This is Ari Nazarov, also  
25 with the Department of Justice, and I represent the

1 defendants in this matter.

2 THE VIDEOGRAPHER: Will the court  
3 reporter please swear in the witness.

4 MICHAEL HUMPHRIES,  
5 30(b)(6) U.S. CUSTOMS AND BORDER PROTECTION,  
6 the witness herein, having been first duly sworn by  
7 the Certified Court Reporter, was examined and  
8 testified as follows:

9 EXAMINATION

10 BY MR. LEV:

11 Q. Good morning, Mr. Humphries, and thank you  
12 for your patience this morning. As you heard, my  
13 name is Ori Lev. I represent the plaintiffs in this  
14 litigation, as well as Ms. Walters. She's going to  
15 be asking you some questions toward the end of the  
16 deposition.

17 Before we begin, I would like to go over  
18 some ground rules. This is essentially a one-way  
19 conversation where Ms. Walters and I ask questions  
20 and you answer them. So that the court reporter can  
21 get an accurate record of your testimony, we need  
22 you to give audible responses. Not -- no head  
23 shakes or nods and no "uh-huhs" and "huh-uhs," but  
24 "yes," "no," and [indiscernible audio].

25 Do you understand that?

1                   You can answer.

2       BY MR. LEV:

3           Q.     You can answer.

4           A.     I would say that they -- they were  
5     undocumented, and they were lining up along the  
6     sidewalk of the port, and they were waiting to come  
7     in.

8           Q.     And the only reason they were unable to come  
9     in was because CBP officers stopped them allegedly  
10    at the border line; correct?

11          A.     CBP officers stopped them because we had no  
12    capacity to bring additional in at the time.

13          Q.     Okay. Give me one second. I'm sorry.

14                 Did any other ports in Arizona engage in  
15    metering while you were serving as the Assistant  
16    Director of Border Security?

17          A.     As I mentioned --

18                 MS. SHINNERS: Object to the scope to  
19    the extent it is before 2016.

20                 But continue, Mr. Humphries.

21                 THE WITNESS: As I said before, the  
22    Haitians, large groups started arriving in San  
23    Ysidro. From there, they kind of moved their way  
24    west to Calexico. Then San Luis. At some point  
25    after San Luis, Nogales began to -- to receive

1 Haitians applying.

2 And I should say that when I brought in  
3 the TDY folks to San Luis, they were all -- also  
4 moving individuals to Nogales from San Luis for  
5 processing.

6 BY MR. LEV:

7 Q. And you were moving individuals from  
8 San Luis to Nogales for processing because Nogales  
9 actually had a greater capacity to handle them than  
10 San Luis did at that time; correct?

11 A. The large groups had started [indiscernible  
12 audio] west, and when they were in San Luis, Nogales  
13 weren't getting those large numbers as San Luis did,  
14 and later it moved -- the Haitians kind of kept  
15 moving west.

16 Q. I understand.

17 But you said that at one point you were  
18 taking migrants from San Luis to -- and bringing  
19 them to Nogales for processing.

20 Did I understand you correctly?

21 A. Yes.

22 Q. And you did that because at that time there  
23 were -- there was greater processing capability at  
24 Nogales, and you were trying to implement a system  
25 that would allow them to process the maximum number

1 of people given your resources; correct?

2 A. Nogales was not busy. They were busy but  
3 not as busy as San Luis was and in the numbers that  
4 they were getting.

5 Q. And so the reason you were taking migrants  
6 from San Luis to Nogales for processing was to  
7 increase the numbers that you could process at the  
8 ports of entry in Arizona. Is that correct?

9 A. I would say that the reason they were taken  
10 to Nogales was because the numbers in custody at  
11 San Luis was unsafe, unhealthy, and we were trying  
12 to get a better handle to be able to accommodate  
13 those in our custody.

14 Q. You were trying to solve a problem by using  
15 your resources to process the greater number of  
16 migrants than if you just left them all at San Luis.  
17 Is that correct?

18 A. I would say that, again, the numbers that  
19 were in custody at San Luis was unhealthy and not  
20 safe. They were individuals in our custody who had  
21 been in our custody for days and days who had not  
22 been medically screened, who were sleeping outside  
23 the port at San Luis.

24 And so to better manage the situation and to  
25 try and -- in an attempt to try to make San Luis

1 more safe so that the employees there could -- could  
2 work safely, along with all those in our custody be  
3 safe, we had asked Nogales to help accommodate.

4 Q. Did Nogales engage in metering during that  
5 time in 2016?

6 MS. SHINNERS: Objection. Vague as to  
7 time.

8 BY MR. LEV:

9 Q. Did Nogales engage in metering at any time  
10 in 2016?

11 A. I believe that's when the metering first  
12 started at Nogales was late in 2016.

13 Q. And -- okay.

14 In connection with the Haitian migrants?

15 A. Correct. And it wasn't only Haitian. There  
16 were -- there were Central American family units as  
17 well and --

18 Q. You testified that in November of 2017, you  
19 became the acting Port Director for Nogales;  
20 correct?

21 A. On an acting basis, yes.

22 Q. And then you stayed in that role and  
23 continued and became the permanent Area Port  
24 Director for Nogales in June of 2018; correct?

25 A. Correct.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., et al.,

Plaintiffs,

vs.

Case No.

17-cv-02366-BAS-KSC

KEVIN K. McALEENAN<sup>1</sup>, et al.,

Defendants.

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF  
MARIZA MARIN

THURSDAY, MAY 28, 2020

8:37 A.M.

SAN DIEGO, CALIFORNIA

Reported remotely by Megan M. Grossman-Sinclair,  
CSR No. 12586

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1 APPEARANCES (Continued)

2

3 Also Present:

4 JOSEPH NEW, Videographer  
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5

KEVIN CRANFORD, technical support  
(By Videoconference)

6

7 LOUISA SLOCUM, ESQ., CBP  
(By Telephone)

8

STACEY FALKOFF, ESQ., CBP  
(By Telephone)

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2 WITNESS: MARIZA MARIN

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19 INFORMATION REQUESTED

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| 5  | Exhibit 183       | Definition of "Capacity" from Ballentine's Law Dictionary.                                                                                                                                         | 79   |
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| 7  | Exhibit 184       | Exhibit 27 to Defendants' Opposition to Plaintiffs' Motion for Class Certification.                                                                                                                | 80   |
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| 16 | Exhibit 187       | E-mail from Mariza Marin to Robert Hood, April 18, 2018, Subject: Intake. (Bates AOL-DEF-00600149)                                                                                                 | 123  |
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| 19 | Exhibit 188       | E-mail chain, top e-mail from Robert Hood to Sidney Aki, November 9, 2018, Subject: Re: Surge efforts at SYS. (Bates AOL-DEF-00348763 - 00348764)                                                  | 133  |
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| 6  | Exhibit 190                    | E-mail chain, top e-mail<br>from Johnny Armijo to Robert<br>Hood, October 12, 2016,<br>Subject: Capacity.<br>(Bates AOL-DEF-00062088 -<br>00062089)                                                                     | 141  |
| 10 | Exhibit 191                    | E-mail chain, top e-mail<br>from Sidney Aki to Robert<br>Hood and others, September<br>10, 2016, Subject:<br>San Ysidro End of Day AEU<br>Reporting for September 9,<br>2016.<br>(Bates AOL-DEF-00065872 -<br>00065874) | 162  |
| 15 | Exhibit 192                    | E-mail from Justin Kelemen<br>to various recipients, July<br>27, 2016, Subject: San<br>Ysidro End of Day AEU<br>Reporting for July 26, 2016.<br>(Bates AOL-DEF-00065048 -<br>00065050)                                  | 163  |
| 19 | Exhibit 193                    | E-mail chain, top e-mail<br>from Mariza Marin to Kylvin<br>Gomez, September 8, 2018,<br>Subject: Intake.<br>(Bates AOL-DEF-00603278)                                                                                    | 166  |
| 22 | Exhibit 194                    | E-mail chain, top e-mail<br>from Eric Crouston to Sidney<br>Aki and others, July 12,<br>2019, Subject: SYS Daily<br>Custody Intake and ERO<br>Movement 7/10/2019.<br>(Bates AOL-DEF-00084038)                           | 176  |

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| 20 | Exhibit 204                    | Memorandum April 6, 2012     | 201     |
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| 12 | Exhibit 207                    | E-mail from Mariza Marin to  | 215  |
| 13 |                                | Sidney Aki, November 9,      |      |
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| 17 | Exhibit 208                    | E-mail chain, top e-mail     | 218  |
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| 22 | Exhibit 209                    | E-mail chain, top e-mail     | 220  |
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|    | Exhibit 210                    | E-mail chain, top e-mail     | 223  |
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| 14 | 214    | E-mail chain, top e-mail<br>from Moises Castillo to<br>Robert Hood, November 17,<br>2016, Subject: **RFI**<br>Please Provide Response by<br>COB today.<br>(Bates AOL-DEF-00706277 -<br>00706278)                                                                               | 244  |
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| 7  | 218    | E-mail chain, top e-mail from Edward Chavoya to Sidney Aki and others, August 16, 2016, Subject: Numbers on the Mexico Side. (Bates AOL-DEF-00065471)              | 282  |
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1 SAN DIEGO, CALIFORNIA

2 THURSDAY, MAY 28, 2020; 8:37 A.M.

3

4 VIDEOGRAPHER: We are now on the  
5 record. This begins video -- the video deposition  
6 of Mariza Maria (sic) in the matter of Al Otro  
7 Lado v. McAleenan in the United States District  
8 Court, Southern District of California. Today is  
9 Thursday, May 28th, 2020. The time is 8:38 a.m.  
10 This deposition is being taken remotely at the  
11 request of Mayer Brown.

12 The videographer is Joseph New, and  
13 the court reporter is Megan Grossman-Sinclair of  
14 Magna Legal Services.

15 Will counsel and all parties  
16 present state their appearances and whom they  
17 represent.

18 MR. MEDLOCK: Good morning. This  
19 is Stephen Medlock, Mayer Brown LLP, on behalf of  
20 plaintiffs and the putative class.

21 MR. GUISADO: Good morning. This  
22 is Angelo Guisado, Center for Constitutional  
23 Rights, on behalf of the plaintiffs and the  
24 putative class.

25 MS. SHINNERS: Good morning. This

1 is Katherine Shinnners. I am with the U.S.  
2 Department of Justice, Office of Immigration  
3 Litigation, on behalf of Defendant. With me is my  
4 colleague, Susan Imerman.

5 Susan.

6 MS. IMERMAN: Yes. Sorry. This is  
7 Susan Imerman with the U.S. Department of Justice.

8 VIDEOGRAPHER: Will the court  
9 reporter please swear in the witness.

10 THE COURT REPORTER: My name is  
11 Megan Grossman-Sinclair, a California Certified  
12 Shorthand Reporter, and this deposition is being  
13 held via videoconferencing equipment. The witness  
14 and reporter are not in the same room. The  
15 witness will be sworn in remotely pursuant to  
16 agreement of all parties. The parties stipulate  
17 that the testimony is being given as if the  
18 witness was sworn in person.

19 So stipulated.

20 MR. MEDLOCK: So stipulated.

21 MS. SHINNERS: Yes.

22 THE COURT REPORTER: Also I'd like  
23 to remind everyone it's very important not to  
24 interrupt each other during question and answer as  
25 well as colloquy because the technology cuts out

1 and it increases the chances that I will miss  
2 what's said. Thank you.

3

4 MARIZA MARIN,  
5 having been first duly sworn,  
6 testifies as follows:

7

8 EXAMINATION

9 BY MR. MEDLOCK:

10 Q. Good morning, Ms. Marin.

11 A. Good morning.

12 Q. Can you please state and spell your  
13 full name.

14 A. Sure. It's Mariza Marin,  
15 M-a-r-i-z-a, M-a-r-i-n.

16 Q. Have you ever gone by any other  
17 name?

18 A. No.

19 Q. Are you presently employed?

20 A. Yes.

21 Q. Who are you employed by?

22 A. U.S. Customs and Border Protection.

23 Q. What is your present job title at  
24 U.S. Customs and Border Protection?

25 A. I am the assistant director of

1 any standard operating procedure or muster where  
2 it is written down that the audience room is  
3 supposed to be used for only a short period of  
4 time?

5 MS. SHINNERS: Object to the scope.

6 THE WITNESS: That I can recollect,  
7 no.

8 MR. MEDLOCK: All right. I would  
9 like to pull up Tab 10, please, Kevin.

10 Showing you what we've marked --  
11 what will be marked as Exhibit 190 to your  
12 deposition, it is a three-page e-mail that bears  
13 the Bates numbers AOL-DEF-0073938 through -40.

14 (Exhibit No. 190, later reassigned  
15 as Exhibit No. 195 on Page 227, was  
16 marked for identification by the  
17 shorthand reporter and is attached  
18 hereto.)

19 BY MR. MEDLOCK:

20 Q. And if you look at the top of the  
21 e-mail, it's sent from you to Sidney Aki on  
22 September 16, 2016, at 8:31 p.m.

23 Do you see that?

24 A. I do.

25 MR. MEDLOCK: And if you can exit

1 out of that blow-up, Kevin.

2 BY MR. MEDLOCK:

3 Q. The top of the document or the  
4 e-mail says:

5 "Admissibility enforcement  
6 unit 24-hour reporting  
7 September 11, 2016."

8 Do you see that?

9 A. I do.

10 Q. Have you created reports in this  
11 format for Mr. Aki on a regular basis?

12 A. Someone in the unit, typically a  
13 supervisor, would create that report.

14 Q. And what's the purpose of these  
15 admissibility enforcement unit 24-hour reports?

16 A. It's a daily report from port  
17 leadership. I believe it does go up to the field  
18 office -- I don't know if it initially did -- but  
19 on the status of what's going on in -- or what --  
20 a 24-hour snapshot of AEU.

21 Q. Okay. Isn't it true that there  
22 have been several days where the number of  
23 migrants transported out of the AEU at San Ysidro  
24 is substantially higher than the number of  
25 migrants that the port intakes?

1                   A.    I don't know the number of days,  
2                   but yes, that could have happened.

3                   Q.    Okay.  So I want to focus on the  
4                   first page of this e-mail, and it has a table at  
5                   the top under current detainees in CBP custody.

6                               And it shows that there are 349  
7                   individuals on site; correct?

8                   A.    Correct.

9                   Q.    And that refers to individuals at  
10                  the San Ysidro AEU; correct?

11                  A.    Correct.

12                  Q.    And then there is a reference to  
13                  individuals being held at Barracks 5.

14                               What does that mean?

15                  A.    Barracks 5 is a border patrol  
16                  facility at the Chula Vista station.

17                  Q.    And there is a reference to  
18                  Brownfield, although it notes that there is nobody  
19                  being held there on this day.

20                               What's Brownfield?

21                  A.    Brownfield is another border patrol  
22                  station.

23                  Q.    And then there is a reference to  
24                  Imperial Beach, and this report shows 36  
25                  individuals being held there.

1 What is Imperial Beach?

2 A. That's also a border patrol  
3 station.

4 Q. So on occasion the San Ysidro port  
5 of entry has been able to house migrants that  
6 would otherwise be at the AEU in Barracks 5,  
7 Brownfield, or the Imperial Beach substations;  
8 correct?

9 A. Yes.

10 Q. And then beneath that, there is a  
11 reference to asylum line.

12 What does "asylum line" mean, to  
13 your knowledge?

14 A. So prior to the inception of  
15 metering, when the AEU was full, non-U.S. citizens  
16 without documents for admission would queue in an  
17 area between the limit line at the port of entry  
18 and the primary lanes to wait until there was  
19 sufficient space in the unit to be -- for intake.

20 Q. So there was a period in which  
21 individuals who were metered were waiting in  
22 asylum line on U.S. soil before they were metered;  
23 correct?

24 MS. SHINNERS: Objection;  
25 mischaracterizes testimony.

1 THE WITNESS: That is not correct.

2 There was a period prior to metering where  
3 individuals would wait in that asylum line on U.S.  
4 soil and be brought in to be processed.

5 BY MR. MEDLOCK:

6 Q. When did the asylum line stop being  
7 used at the San Ysidro port of entry, to your  
8 knowledge?

9 A. The asylum line stop being used in  
10 late May of 2016 when the number of non-U.S.  
11 citizens without documents exceeded from primary  
12 clear south into Mexico. At that point the old --  
13 we exhausted every effort to be able to expand any  
14 additional processing and detention capacity. And  
15 at that point we had to stop intake at the  
16 international boundary because that line stretched  
17 all the way through the infrastructure and there  
18 was no space for them.

19 That was the first time we saw  
20 large groups in the hundreds of -- primarily  
21 Haitian nationals arrived at that time, but there  
22 were already other nationalities at the front of  
23 that queue on primary.

24 And so at that point, we had to  
25 intake all of those people to make sure they were

1 not left in the elements, and at that point we had  
2 to convert some additional space to be able to  
3 take those people in -- the custody I believe was  
4 about 1,076 at that point.

5 So we were severely over what our  
6 custody capacity was, and then we had to hold that  
7 line. From that point on, we had to stop intake  
8 in Mexico, and there was not an asylum line after  
9 that.

10 Q. Okay. Move to strike everything  
11 after "May 2016" as nonresponsive.

12 My -- I do want to ask you: The  
13 events you described occurred in May 2016, but the  
14 San Ysidro port of entry didn't actually start  
15 metering until July 2016; correct?

16 A. We started metering in May of '16.

17 Q. So if an interrogatory response  
18 says that the San Ysidro port of entry began  
19 metering in July 2016, it's just simply wrong; is  
20 that right?

21 A. That is right. To the best of my  
22 knowledge, we started in May of 2016.

23 Q. So I want to turn back to the  
24 exhibit in front of you, Exhibit 190. And if you  
25 turn to the second page of the e-mail ending in

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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 33 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

EXHIBIT 33 IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT

**Office of Field Operations  
Incident Management Division  
July 13, 2017**

**Action Required:** Information Only

**Time Constraint:** July 14, 2017

**Issue:** CBP Southwest Border Migration Surge – Asylum Issue

**Executive Summary:**

On July 12, 2017, Al Otoro Lado, Incorporated, filed a complaint with the United States District Court for the Central District of California (Los Angeles) alleging that U.S. Customs and Border Protection (CBP) officers systematically violated U.S. and International law by refusing to allow individuals to seek protection in the United States.

During the time period listed in the complaint, CBP was on the forefront of a global migration crisis. Increased numbers of unaccompanied alien children (UAC), family units (FAMUs), and single adults, seeking to unlawfully enter the United States, overwhelmed CBP's capabilities to protect and process those persons in an expeditious manner.

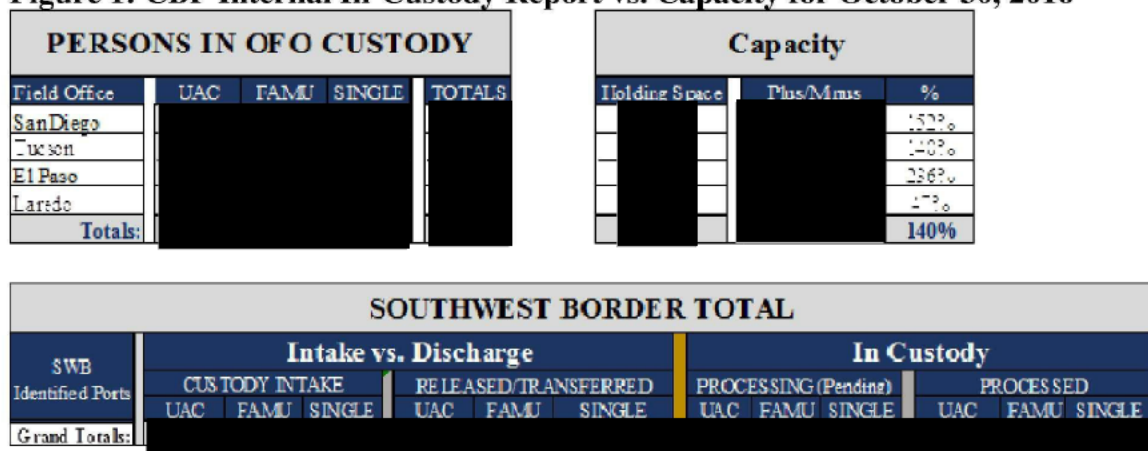
It is CBP's attempts to manage these challenges, in concert with the Government of Mexico, which are being challenged as a willful violation of human and civil rights by CBP officers and agents.

**Context:**

To understand the context of the large numbers of illegal migration experienced in 2016 and 2017, it is necessary to acknowledge that the immigration policies of Panama, Costa Rica, El Salvador, Guatemala, and Mexico, all sought to allow unlawful entry of person into those countries with the understanding that those persons would only transit, while en route to the United States. Years of unrestrained access through these countries facilitated the amassing of record numbers of unlawful migrants at, and between, United States southwest border ports of entry.

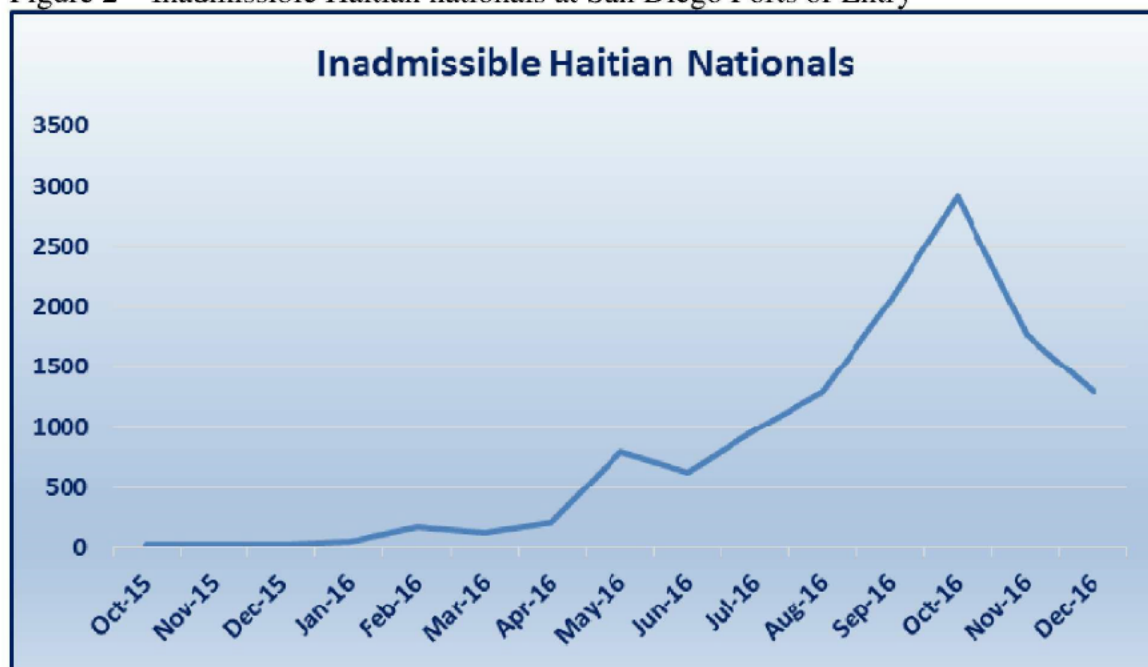
Beginning in early 2016 and cumulating in October 2016, unexpected levels of illegal migration caused a large draw on resources and outpaced temporary holding capacities at POEs (Figure 1). In that same month, CBP's total apprehensions were 76 percent above the previous five-year average.

Figure 1: CBP Internal In-Custody Report vs. Capacity for October 30, 2016

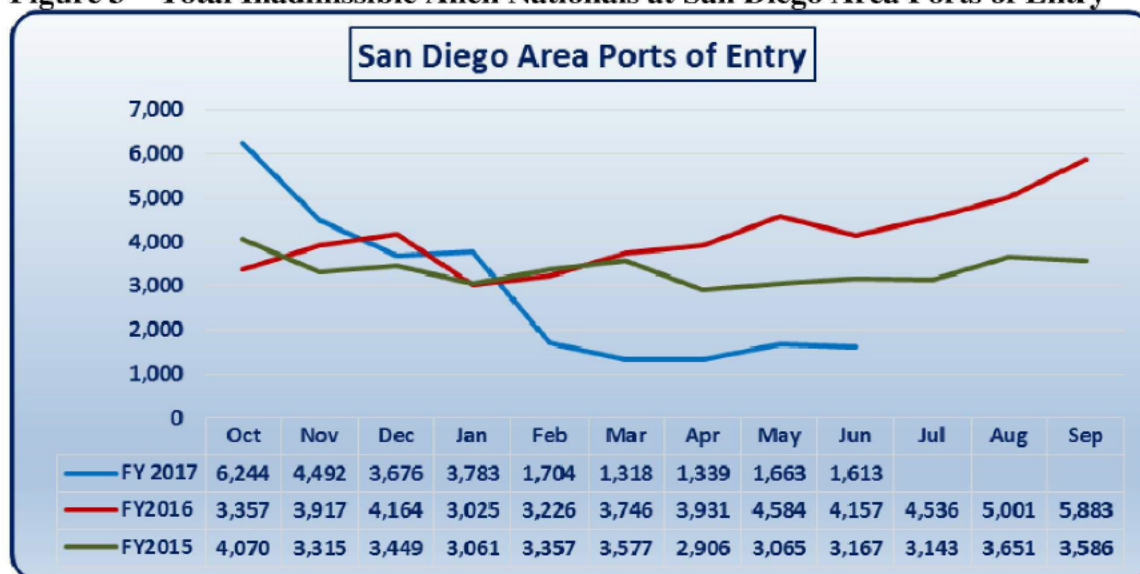


While surges in illegal immigration on the southern Texas border created holding capacity challenges for the U.S. Border Patrol, the catalyst for detention space challenges for CBP’ Office of Field Operations (OFO) occurred in San Ysidro California. As early as April 2016, OFO ports of entry in the San Diego area began experiencing a surge of Haitian nationals attempting to seek refuge in the U.S. when fleeing the economic collapse in Brazil (figure 2).

Figure 2 – Inadmissible Haitian nationals at San Diego Ports of Entry



**Figure 3 – Total Inadmissible Alien Nationals at San Diego Area Ports of Entry**



Concurrently, the San Ysidro Port of Entry began extensive renovations which decreased temporary holding capacities by two-thirds. Detention space at the port of entry was originally certified for occupancy at [REDACTED] persons. By May of 2016, port leadership had converted office and administrative spaces to temporary holding areas to increase capacity to over 900 persons awaiting transfer to ICE/ERO for detention. However, the ultimate demolition of that building required the use of semi-mobile facilities to be set up, and the legal occupant capacity for the holding of inadmissible persons was again decreased to [REDACTED] individuals.

As construction at San Ysidro continued, it was necessary for officers to re-direct foreign nationals arriving by foot away from the old pedestrian entrance on the east side of port, to the **new** pedestrian facility, located on the west side of the port. It is believed that this redirection for processing may have been misconstrued as a denial of the applicant's request.

Additionally, because CBP was forced to limit intake of pedestrian applicants due to legal and safety capacity requirements, the Government of Mexico, in collaboration with the Government of Tijuana, and Non-Governmental Organizations (NGOs), sought to relieve the unsafe and unsanitary conditions created by people awaiting CBP processing outside the port of entry. Those entities established shelters to ensure their health and safety, and escorted them away from the elements while they waited. This humanitarian service is believed to be the source of allegations of collusion by CBP with the Government of Mexico to deny the illegal migrants the opportunity to ask for asylum in the U.S.

**Management of Illegal Migration Surge:**

To mitigate, overcrowding at POEs, CBP:

- Modified administrative space to meet the needs of the growing detention population.
- POEs leveraged U.S. Border Patrol (USBP) facilities, if USBP locations were not already at capacity.
- CBP continued to coordinate with ICE-ERO as lack of available detention space limited their ability receive those referred by CBP for detention under sections 235 and 236 of the INA, as amended.
  - Due to the slow turn-over of custody, the numbers of those in CBP's temporary custody continued to increase, making conditions potentially unsafe and unsustainable.
- CBP surged agents and officers to southwest border locations in California, Arizona, and Texas (Figure 4)
- CBP further deployed agents and officers with special language abilities to assist in the immigration processing of persons representing many foreign language needs.
- CBP immediately began efforts to establish temporary holding facilities at heavily impacted areas on the southwest border.
  - On November 23, 2017 the first of these facilities became operational at Tornillo, TX at a cost of \$2.6M for 30-days.
  - On December 10, 2017, the second facility became operational at Donna, TX at a cost of \$3.8M for 30 days.
  - CBP spent a total of \$20.2M on the operation of these facilities to ensure the health and safety of inadmissible family units (Figure 4).

**Figure 4 – FY17 Migrant Surge Cost Actuals**

| Office                            | Actuals as of 4/12/17 | Comments                                                                                                           |
|-----------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>USBP</b>                       | <b>\$9,126,299</b>    |                                                                                                                    |
| Overtime                          | \$4,385,823           | Includes FEPA OT only (excludes BPAPRA OT)                                                                         |
| TDY                               | \$1,743,714           | Actual TDY personnel supporting overflow operations in RGV                                                         |
| Operations Support                | \$2,996,763           | Increased wraparound services (laundry, shower, medical) and purchase card consumables/supplies                    |
| <b>OFO</b>                        | <b>\$15,757,187</b>   |                                                                                                                    |
| Overtime                          | \$6,246,029           | OFO OT includes all overtime above what was originally planned pre surge                                           |
| TDY                               | \$7,972,128           | OFO TDY personnel supporting overflow operations in Tucson and San Diego, and TDY personnel for the Haitian Crisis |
| Operations Support                | \$1,539,030           | Includes purchase card purchases, supplies, blankets, care and feeding etc.                                        |
| <b>Facilities and Maintenance</b> | <b>\$20,244,931</b>   |                                                                                                                    |
| Overtime                          | \$14,952              | Site prep/stand-up and maintenance                                                                                 |
| TDY                               | \$13,546              | Site prep/stand-up and maintenance                                                                                 |
| Facilities                        | \$20,169,683          | Includes funding for both Donna and Tornillo soft sided facilities (as of 4.15.17 softsides are closed)            |
| Operations Support                | \$46,749              | Site prep/stand-up and maintenance                                                                                 |
| <b>OIT</b>                        | <b>\$121,786</b>      |                                                                                                                    |
| Overtime                          | \$23,128              | OIT overtime for support of El Centro Haitian efforts                                                              |
| Operations Support                | \$98,658              | Site prep/stand-up and maintenance                                                                                 |
| <b>Surge Total</b>                | <b>\$45,250,204</b>   |                                                                                                                    |

- On November 11, 2016, Office of Field Operations (OFO) leadership held a conference call with southwest border Directors of Field Operations to discuss mitigation strategies to ensure the safety of officers and the individuals being processed by CBP. Discussion focused on utilizing available options to mitigate overcrowding such as:
  - Leveraging OFO headquarters for additional resources.
  - Utilizing all available space at ports of entry, adapting to supplement detention space.
  - Collaborating with ERO to transfer and transport processed detainees.

- Coordinating with USBP on available detention space.
- Coordinating with local Government of Mexico officials on managing the flow of migrants without lawful status to enter the United States (referred to as “metering”).

**Figure 5 - Collaborative Migration Management Efforts with the Government of Mexico**

| Location                       | Start              | End              |
|--------------------------------|--------------------|------------------|
| <b>San Diego Field Office:</b> |                    |                  |
| San Ysidro                     | May 30, 2016       | February 5, 2017 |
| Calexico                       | September 19, 2016 | February 5, 2017 |
| <b>Tucson Field Office:</b>    |                    |                  |
| Not applicable                 |                    |                  |
| <b>El Paso Field Office:</b>   |                    |                  |
| Bridge of America              | November 11, 2016  | December 2, 2016 |
| Paso Del Norte                 | November 11, 2016  | December 2, 2016 |
| Ysleta                         | November 11, 2016  | December 2, 2016 |
| <b>Laredo Field Office:</b>    |                    |                  |
| Brownsville                    | November 2016      | January 2017     |
| Eagle Pass                     | November 2016      | January 2017     |
| Laredo                         | November 2016      | January 2017     |
| Hidalgo/Pharr/Anzalduas        | November 2016      | January 2017     |

**Conclusion:**

The laws of the United States allow people to seek asylum on the grounds that they are being persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion. CBP policies and procedures are based on these laws and are designed to protect vulnerable and persecuted persons. Those policies include compliance with federal and state laws, including Sections 101(b)(1) and 101(c)(1) of the Immigration and Naturalization Act (INA), 8 C.F.R. § 1236.2, 8 C.F.R. § 1236.3, *Reno v. Flores* settlement (including 9<sup>th</sup> Circuit ruling of Judges Gee and Moskowitz), and Certifications of Occupancy issued for CBP facilities.

It was the convergence of the high work demand and the legal guidelines which predicated CBP’s otherwise extraordinary, efforts to ensure the health and welfare of all would-be asylum seekers, as well as the officers and agents on the front lines of this migration tsunami.

In unusual circumstances, where the number of individuals at a particular port of entry is more than the facility can safely accommodate, CBP limited the number of people permitted to enter at one time. This process was designed to ensure the safety of officers and those being processed, in compliance with the laws and policies listed in paragraph 6, above). In these rare instances where a port of entry could not accommodate all of those individuals seeking admission to the United States at one time, the Government of

Mexico, in collaboration with the Government of Tijuana, and Non-Governmental Organizations (NGOs), established shelters to ensure their health and safety, while they waited. Representatives of these humanitarian programs would keep in close contact with CBP to escort those awaiting processing to the port of entry, when it was safe to do so.

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 20 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION TO  
 EXCLUDE DEFENDANTS'  
 PURPORTED EXPERT  
 TESTIMONY**

**EXHIBIT 50 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM  
 OF POINTS AND AUTHORITIES  
 IN SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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**From:** WAGNER, JOHN P  
**Sent:** Tuesday, September 13, 2016 9:42 AM  
**To:** DUGAN, MAUREEN B; HOFFMAN, TODD A; HUTTON, JAMES R  
**Subject:** FW: Haitians arriving in Tijuana

**From:** WAGNER, JOHN P  
**Sent:** Tuesday, September 13, 2016 9:41 AM  
**To:** NUNEZ-NETO, BLAS <[REDACTED]>; Owen, Todd C (AC OFO) <[REDACTED]>  
**Cc:** MCALEENAN, KEVIN K <[REDACTED] LE [REDACTED]>; QUINN, TIMOTHY <[REDACTED]>  
**Subject:** RE: Haitians arriving in Tijuana

DP

**From:** NUNEZ-NETO, BLAS  
**Sent:** Tuesday, September 13, 2016 9:34 AM  
**To:** Owen, Todd C (AC OFO) <[REDACTED]>; WAGNER, JOHN P <[REDACTED]>  
**Cc:** MCALEENAN, KEVIN K <[REDACTED] LE [REDACTED]>; QUINN, TIMOTHY <[REDACTED]>  
**Subject:** FW: Haitians arriving in Tijuana  
**Importance:** High

EAC Owen, see the below from our Attache in Mexico. [REDACTED]

DP

**From:** GONZALEZ, CARLOS L  
**Sent:** Tuesday, September 13, 2016 8:54 AM  
**To:** KOUMANS, MARK <[REDACTED]>; NUNEZ-NETO, BLAS <[REDACTED]>; SAUNDERS, IAN C <[REDACTED]>; ORTIZ, ABDIAS <[REDACTED]>; MCGILL, JENNIFER A <[REDACTED]>  
**Subject:** RE: Haitians arriving in Tijuana

Sir,

EXHIBIT NO. 27  
Dec. 13, 2019

[REDACTED] If this happens, I fear that we will have mass crowds not only coming up the pedestrian lanes, but the vehicle ones as well as the local police will follow their leadership instructions and most likely guide the crowds to the port as they arrive in the City.

DP

Carlos L. Gonzalez  
Attaché  
Customs and Border Protection  
U.S. Embassy, Mexico City  
Office: 5080 2515  
Cell: 55 4339 5432  
U.S. # 301 985 8843 X 2515



**From:** KOUMANS, MARK  
**Sent:** Tuesday, September 13, 2016 5:57 AM  
**To:** NUNEZ-NETO, BLAS [REDACTED]; SAUNDERS, IAN C. [REDACTED]; ORTIZ, ABDIAS [REDACTED] GONZALEZ, CARLOS L [REDACTED] MCGILL, JENNIFER A [REDACTED]  
**Subject:** FW: Haitians arriving in Tijuana

**From:** Owen, Todd C (AC OFO)  
**Sent:** Tuesday, September 13, 2016 6:16:39 AM  
**To:** MCALEENAN, KEVIN K; KOUMANS, MARK  
**Subject:** FW: Haitians arriving in Tijuana

Deputy, update. 900 Haitians arrived into Tijuana yesterday.

Todd C. Owen  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs & Border Protection

**From:** FLORES, PETE ROMERO  
**Sent:** Tuesday, September 13, 2016 2:53:31 AM  
**To:** Owen, Todd C (AC OFO); WAGNER, JOHN P; GOOD, BEVERLY  
**Cc:** ARMIJO, JOHNNY L  
**Subject:** FW: Haitians arriving in Tijuana

Over 900 Haitians showed up in TJ today looking to be processed by Mexican Immigration for appointments into SYS.

---

From: CASTILLO, MOISES

Sent: Monday, September 12, 2016 6:43:21 PM

To: FLORES, PETE ROMERO; AKI, SIDNEY K

Cc: MISENHELTER, JOSEPH; CARRILLO, SALLY R; MARIN, MARIZA; GUZMAN, SERGIO M; ARMIJO, JOHNNY L;

HOOD, ROBERT W

Subject: Haitians arriving in Tijuana

Sir,

Video of Hatians at El Chaparral in Tijuana

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 74 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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28

**From:** THOME, FERNANDO A

**Sent:** Thursday, November 17, 2016 2:10 PM

**To:** CBP-CAT

**CC:** BROWN, FRANCIS D; CLEAVES, SAMUEL B; BROWN, FRANCIS D; OLIVAS, BERNARDO; SAINDON, CHRISTOPHER; CLEAVES, SAMUEL B; SOLIS, SEVERIANO; MILLER, BARRY F; REYES, VICTOR R; SIFFORD, DONNA R; MANCHA, HECTOR

**Subject:** RE: \*\*RFI\*\* Please Provide Response by COB today

**Attachments:** PDN1.jpg; YSL1.jpg; BOTA1.bmp

ALCON,

1. Is the POE/crossing metering OTMs?
  - Port of El Paso: Yes
  - Port of Columbus: No
  - Port of Santa Teresa: No
  - Port of Albuquerque: No
  - Port of Tornillo: No
  - Port of Presidio: No
2. Who is doing the metering? (CBP or Mexico)
  - CBP OFO officers are performing the metering.
3. Where is the metering taking place? (In Mexico, in the U.S., on the bridge)
  - At the top of the bridge or the base of the bridge in the United States at the Port of El Paso (Paso Del Norte, Bridge of the Americas, Ysleta). Location of metering varies between the top of the bridge or the bottom depending on operational feasibility
4. How is the metering being handled? (e.g. turnstile, tickets, turning people away)
  - They are provided an appointment for a future date (within a day or two). For example: they are instructed to return on Thursday at 0800.
  - They are then turned away and provide NGO locations in Juarez
5. If the metering is done by Mexico, how is the POE communicating the number of OTMs to be metered to the POE? (Phone call, how often, when, etc.)
  - Not applicable – Metering conducted by CBP OFO
6. Has the POE/crossing turned away any aliens due to capacity issues once the aliens were on U.S. soil?
  - All metering is conducted at the top of the bridge or the base of the bridge on the U.S. side, therefore all aliens are being turned away and given appointments while on the U.S. side of the bridge.

Additional note: PAO received inquiry from Mexican Media (El Norte) regarding a group of Hondurans who were turned away at the Port of El Paso. PAO coordinating with OPA on response.

BSC Thome

---

**From:** CLEAVES, SAMUEL B

**Sent:** Thursday, November 17, 2016 11:18 AM

**To:** THOME, FERNANDO A

**Subject:** FW: \*\*RFI\*\* Please Provide Response by COB today

Samuel Cleaves  
Watch Commander  
El Paso Field Office

---

**From:** CBP-CAT

**Sent:** Thursday, November 17, 2016 10:21:30 AM

**To:** ARMDO, JOHNNY L; BROWN, FRANCIS D; CLEAVES, SAMUEL B; LONGORIA, FRANK S; HUMPHRIES, MICHAEL W

**Cc:** THORNBLOOM, LINDA A; TAMAYO, ENRIQUE S; VAQUERO, ROBERTO

**Subject:** \*\*RFI\*\* Please Provide Response by COB today

All,

Please provide an immediate response to the information below for each POE and bridge on the Southwest Border:

1. Is the POE/crossing metering OTMs?

2. Who is doing the metering? (CBP or Mexico)
3. Where is the metering taking place? (In Mexico, in the U.S., on the bridge)
4. How is the metering being handled? (e.g. turnstile, tickets, turning people away)
5. If the metering is done by Mexico, how is the POE communicating the number of OTMs to be metered to the POE? (Phone call, how often, when, etc.)
6. Has the POE/crossing turned away any aliens due to capacity issues once the aliens were on U.S. soil?

Finally, please send pictures of your pedestrian bridges/turnstile areas as part of the response.

CBP-CAT



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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,<sup>1</sup> *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**EXHIBIT 81 IN SUPPORT OF  
 PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION  
 FOR SUMMARY JUDGMENT**

<sup>1</sup> Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

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**From:** HOFFMAN, TODD A [REDACTED]  
**Sent:** Wednesday, April 25, 2018 6:15 AM  
**To:** HOWE, RANDY J <[REDACTED]>  
**Subject:** RE: Increased Flow and Caravan Anticipated Arrival

---

Thx

---

**From:** HOWE, RANDY J  
**Sent:** Wednesday, April 25, 2018 2:39:27 AM  
**To:** HUTTON, JAMES R; HOFFMAN, TODD A  
**Subject:** FW: Increased Flow and Caravan Anticipated Arrival

Info. Direction from the Commissioner on the handling of the Caravan.

Randy J. Howe  
Executive Director, Operations  
Office of Field Operations  
U.S. Customs and Border Protection  
[REDACTED]

---

**From:** FLORES, PETE ROMERO  
**Sent:** Tuesday, April 24, 2018 11:53:46 PM  
**To:** MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOWE, RANDY J; AKI, SIDNEY K  
**Cc:** FLANAGAN, PATRICK S  
**Subject:** RE: Increased Flow and Caravan Anticipated Arrival

Sir,

Message acknowledge. We have started verbal briefing on the importance of being professional and ensuring our limit line (border gate area) personnel are using appropriate messaging. We are also coordinating with Mexican authorities and local partners (BP and ERO).

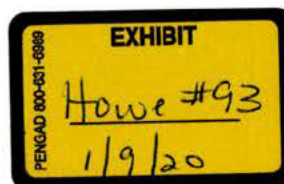
Caravan subjects are arriving in separate waves into Tijuana, hopefully they will not arrive all together at the San Ysidro POE.

Pete

---

**From:** MCALEENAN, KEVIN K  
**Sent:** Tuesday, April 24, 2018 8:26:43 PM  
**To:** Owen, Todd C (AC OFO); WAGNER, JOHN P; HOWE, RANDY J; FLORES, PETE ROMERO; AKI, SIDNEY K  
**Cc:** FLANAGAN, PATRICK S  
**Subject:** Increased Flow and Caravan Anticipated Arrival

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AOL-DEF-00041777

EAC and team,

While we are working diligently with Mexico to address as many caravan members as possible, pressing ICE and others to prepare effective coordination of detention and immigration proceedings, and recommending strong posture changes for S1 decision, it is increasingly likely that we will face the arrival of a large portion of these 500-600 individuals (along with lawyers, activists, and media) in the coming days without a change in enforcement posture, and without new processing options (such as 235(b)(2)(c)) in place.

That said, I know that you have been planning and preparing, and that your field leadership and our officers will act with utmost professionalism and competence, in accordance with law, regulation, and CBP policy, as well as the guidance from the Secretary to effectively enforce the immigration laws of the United States, while appropriately considering and processing claims of fear for those seeking protection. Please confirm that you have sent out guidance regarding safe processing and port security and capacity issues relating to queue management. Please confirm that, absent special circumstances, we will utilize ER, vice NTA, and that release decisions will be made by ICE unless there is a medical emergency or humanitarian exigency. Please also advise if you have any questions or concerns.

Given the attention and generalized concern, I would appreciate updates in near real-time as we manage this unique circumstance among your already busy San Diego Field Office POEs.

I appreciate your good work. Thank you in advance for how you will manage this effort as well,

KM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., ET AL.,  
PLAINTIFFS,  
VS.  
KEVIN K. MCALEENAN, ET AL.,  
DEFENDANTS.

) IN THE DISTRICT COURT  
)  
)  
) CASE NO.  
) 17-cv-02366-BAS-KSC  
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\*\*\*\*\*

CONFIDENTIAL  
ORAL AND VIDEOTAPED DEPOSITION OF  
SAMUEL CLEAVES  
MAY 20, 2020

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION of SAMUEL CLEAVES,  
produced as a witness at the instance of the Plaintiff,  
and duly sworn, was taken in the above-styled and  
numbered cause on May 20, 2020, from 8:59 a.m. to 5:04  
p.m., Mountain Time, before Delia Ordonez, CSR in and  
for the State of Texas, reported by machine shorthand,  
via Webex Magna LegalVision.

Magna Legal Services  
866.624.6221  
www.MagnaLS.com

A P P E A R A N C E S

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ALSO PRESENT:

Evan McCulloch  
Louisa Slocum, CBP

THE VIDEOGRAPHER:

Solange Tran

THE MAGNA LEGAL TECHNICIAN:

Kevin Cranford

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1 THE VIDEOGRAPHER: We are now on the  
2 record. This begins Media No. 1 in the deposition of  
3 Sam Cleaves in the matter of Al Otro Lado, Inc., et al.  
4 versus Kevin K. McAleenan, et al., in the United States  
5 District Court Southern District of California.

6 Today is Wednesday, May 20th, 2020, and the  
7 time is 9:59 a.m. This deposition is being held  
8 remotely at the request of Mayer Brown, LLP.

9 Videographer is Solange Tran, our trial tech, Kevin  
10 Cranford, and the court reporter is Delia Ordonez, all  
11 through Magna Legal Services.

12 Will counsel and all parties present please  
13 state their appearances and who they represent?

14 MR. FENN: Matthew Fenn from Mayer Brown,  
15 and I represent the plaintiffs.

16 MS. FIELDS: Sydney Fields from Mayer  
17 Brown, also for the plaintiffs.

18 MS. SHINNERS: Katherine Shinnners from U.S.  
19 Department of Justice for the defendants.

20 MR. NAZAROV: Ari Nazarov, also from the  
21 U.S. Department of Justice, for the defendants.

22 MS. SHINNERS: And we have agency counsel  
23 present from U.S. Customs and Border Protection, Louisa  
24 Slocum, and Evan McCulloch on the phone.

25 THE VIDEOGRAPHER: Will the court reporter

1 please swear in the witness?

2 SAMUEL CLEAVES,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. FENN:

6 Q. Good morning, Mr. Cleaves. Thank you for  
7 taking the time to testify today -- we -- we appreciate  
8 it -- under more challenging circumstances than -- than  
9 normal.

10 A. Yes, sir.

11 Q. My name is Matt Fenn, and I represent the  
12 plaintiffs in this action, as you just heard. Before we  
13 begin, I'd like to go over some ground rules. This is a  
14 one-way conversation in which I and my colleague,  
15 Ms. Fields, will ask you questions, and you answer them.  
16 So that the court reporter can accurately record your  
17 testimony, you must give audible responses, no head  
18 shakes, no "uh-huhs." Do you understand that?

19 A. Yes.

20 Q. And as you've probably seen already, given the  
21 web format and the slight time lag in the audio  
22 transmission, it's even more important than usual that  
23 we not talk over each other. So if you could please  
24 wait until I finish a question before answering it, I  
25 will also do my best to wait for you to finish your

1 metering even before November 18th, 2016?

2 A. Yes, they did.

3 Q. Do you know if every port of entry in the  
4 El Paso Field Office was metering in November 2016?

5 A. No. My understanding, it was the Port of  
6 El Paso.

7 Q. Only the Port of El Paso?

8 A. That's my understanding.

9 MR. FENN: Kevin, if we could put up  
10 Exhibit 167, please.

11 Q. (BY MR. FENN) I'm showing you what's been  
12 marked as Exhibit 167 or -- I'm sorry -- will be marked  
13 as Exhibit 167 and is Bates-stamped AOL-DEF-00272935.  
14 This is a November 11th, 2016, e-mail from Kevin  
15 McAleenan to Todd Owen and John Wagner with subject  
16 line: "RE: Metering in Texas."

17 Do you see that?

18 A. Yes, sir.

19 Q. And if I can direct your attention to the  
20 first-in-time e-mail down at the bottom there,  
21 Mr. McAleenan writes to Owen and Wagner:

22 "EAC/DDAC, Just wanted to touch base  
23 directly because I'm not sure it was conveyed with full  
24 clarity from CAT. C1 and I briefed S1 that we wanted to  
25 increase efforts to meter arrivals of non-UAC, non-

1 Mexican CF cases mid-bridge. If INAMI is not willing to  
2 help, we will push up to the line and hold them back  
3 there. This will be mostly CENTAM families. Please  
4 advise if you have concerns and let me know how  
5 implementation goes."

6 Did I read that correctly?

7 A. Yes.

8 Q. What do EAC and DEAC stand for?

9 A. EAC is the executive assistant commissioner.  
10 DEAC is the deputy, deputy assistant -- deputy executive  
11 assistant commissioner.

12 Q. And what about CAT?

13 A. Crisis Action Team.

14 Q. Okay. How about C1 and S1?

15 A. C1 is the abbreviation for commissioner. S1 is  
16 for the Secretary of Homeland Security.

17 Q. Okay. And when you say "commissioner," you  
18 mean the commissioner of CBP?

19 A. Yes, sir.

20 Q. And in November of 2016, who would the  
21 commissioner of CBP have been?

22 MS. SHINNERS: Object to the scope.

23 But go ahead.

24 A. I believe it was Mr. McAleenan, but I might  
25 be -- I don't know when he took over.

1 Q. (BY MR. FENN) And in November of 2016, who  
2 would S1 have been, the secretary of DHS?

3 MS. SHINNERS: Object to the scope.

4 You can answer.

5 A. I think it would have been Ms. Nielsen, but I'm  
6 not sure.

7 Q. (BY MR. FENN) Do you know why CBP wanted to  
8 increase efforts to meter at this time?

9 A. Yes, I do. From the Port of El Paso  
10 perspective, we had a severe overcrowding issue,  
11 extremely severe. And we had tried other methods, like  
12 all kinds of methods to deal with it, you know, take  
13 them all in and place them in other locations, and it  
14 started to -- actually it didn't start to, it flat out  
15 degraded our ability to do other mission sets. It got  
16 to the point where it became an emergency, and so other  
17 methods were being discussed on how to address this  
18 situation.

19 Q. And Mr. McAleenan notes that the metering would  
20 occur midbridge and that CBP officers would push up to  
21 the line and hold them back there; is that correct?

22 A. It says that.

23 Q. In the ports of entry in the El Paso Field  
24 Office, were there officers stationed at the limit line  
25 in November of 2016?

1 A. There were, yes.

2 Q. And what did Mr. McAleenan mean by "hold them  
3 back there"?

4 MS. SHINNERS: Objection, scope,  
5 foundation.

6 A. My understanding is that that's just informal  
7 wording of if you can't process them now, then don't let  
8 them in, and they'll have to wait. So I guess that  
9 would be his wording for waiting, waiting in line.

10 Q. (BY MR. FENN) And so what -- what would that  
11 have looked like in practice at, for instance, the Port  
12 of El Paso in November 2016?

13 A. It would have been very similar, if not the  
14 same, to what we talked about in 2018 for the ports of  
15 entry in your questions on the interrogatories, with the  
16 exception of the first week. There were -- we didn't do  
17 it right in the first week, so we had officers stationed  
18 correctly sometimes and officers not stationed correctly  
19 at other times, so we had some corrections to make in  
20 the first week of this implementation.

21 Q. When you say "not stationed correctly," what do  
22 you mean?

23 A. I mean sometimes the officers weren't stationed  
24 clo- -- as close to the international boundary as they  
25 were supposed to, and there were shifts, especially on

1 the midnight shift, where they pulled the officers down  
2 to the end of the pedestrian catwalks, meaning they were  
3 not at the international boundary.

4 Q. And when you say the "end of the pedestrian  
5 catwalks," do you mean on the U.S. side?

6 A. On the U.S. side, yes, sir.

7 Q. What does CENTAM stand for?

8 A. Central American.

9 Q. Were you personally -- and I'm asking you this  
10 question in your personal capacity. Were you personally  
11 responsible for the implementation or execution of this  
12 guidance?

13 A. No, sir.

14 Q. Was there ever any written guidance issued  
15 outlining this metering effort in November 2016, either  
16 from OFO or the director of the El Paso Field Office?

17 A. I don't think so.

18 Q. How then was the metering guidance conveyed to  
19 CBP officers at ports of entry within the El Paso Field  
20 Office?

21 A. Well, it was definitely conveyed verbally, so  
22 where to be, how to do it, and the reasoning behind it.  
23 In the first week, it wasn't done correctly all the  
24 time, and so we had to do some corrections.

25 Q. And who -- who would have been responsible for

1           A. No, I don't have any reason to believe that  
2   it's not accurate.

3           Q. And so would you agree that, in some instances,  
4   turnbacks did, in fact, occur at the Port of El Paso  
5   between December 2016 and April 2018?

6           A. No, I don't agree with that. I do agree with  
7   our officers have made mistakes. We've done it wrong.  
8   This is obviously incorrect and inappropriate, and we  
9   have had that type of thing occur. So...

10          Q. And -- and you testified earlier that even when  
11   metering was being implemented officially in  
12   November 2016, Mexicans who expressed credible fear were  
13   not supposed to be metered at that time; is that right?

14          A. That's correct.

15          Q. Would you agree that if the CB -- CBP agent in  
16   question in this account did, in fact, tell Martin that  
17   Mexicans could not get asylum in the United States, that  
18   CBP officer was lying?

19                   MS. SHINNERS: Objection, scope.

20                   Go ahead.

21          A. No, I don't know. It could be, but it is  
22   definitely wrong and inappropriate.

23          Q. (BY MR. FENN) Okay.

24          A. Whether or not he actually thought that or not,  
25   it's still completely wrong, but...

1 Q. I'd like to go back to the April 2018 metering  
2 guidance issued by Mr. Owen that we were looking at  
3 earlier.

4 MR. FENN: Kevin, if you could please put  
5 up Exhibit 165.

6 Q. (BY MR. FENN) You may recall from our  
7 discussion of this document earlier that Mr. McAleenan,  
8 on June 16, 2018, just two months after the metering  
9 guidance was issued by Mr. Owen, stated that asylum  
10 seekers were really just a San Ysidro problem, correct?

11 MS. SHINNERS: Objection, mischaracterizes  
12 document.

13 A. I recall the e-mail that you showed me, yes.

14 Q. (BY MR. FENN) Were there -- were the ports of  
15 entry in the El Paso Field Office engaged in metering  
16 asylum seekers as of April 2018, immediately after the  
17 April 2018 metering guidance was issued?

18 A. My understanding is no. My understanding is we  
19 started at the Port of El Paso in late May.

20 Q. Okay. So as of June 2018, when this e-mail  
21 correspondence on your screen took place, ports of entry  
22 in the El Paso Field Office would have been engaged in  
23 metering?

24 A. The Port of El Paso was engaged in metering in  
25 June of 2018, yes, sir.

1 Q. Okay. At ports of entry in the El Paso Field  
2 Office, how are CBP officers who are stationed at the  
3 limit line kept apprised of port capacity?

4 A. Generally speaking, that would be outside their  
5 span of control, so that would be port leadership and  
6 port management control. So they will meter according  
7 to the supervisors and the second line chiefs and the  
8 watch commanders on duty. They will apprise them, I  
9 guess.

10 Q. So the -- the -- if -- if I can just rephrase  
11 to make sure I understand what you're saying.

12 The watch commanders and supervisors and  
13 others at the port of entry will inform or apprise the  
14 officers stationed at the limit line what the port  
15 capacity is?

16 A. Yeah, not directly. I guess it would be more  
17 appropriate to say that they will let them know when  
18 we're able to take people in and when we're not.

19 Q. And how often does that occur?

20 A. Every day.

21 Q. Once a day or at multiple times throughout the  
22 day?

23 A. Multiple times throughout the day. There's  
24 actually two times specifically throughout the day that  
25 Mexican immigration prefers to be notified, so multiple

1 times throughout the day.

2 Q. And when the supervisor or watch commander or  
3 others at the port of entry are informing CBP officers  
4 who are stationed at the limit line what the capacity  
5 is, do they do that verbally or via radio, or how is  
6 that information conveyed?

7 A. Again, they don't get into specifics of  
8 capacity, but their communications with officers at the  
9 international boundary is primarily through radio.

10 Q. Okay. So you said they don't get into  
11 specifics. Is it possible that the -- that a CBP  
12 officer who is stationed at the limit line would have no  
13 idea what the current capacity of the port is at any  
14 given point in time?

15 A. Yeah, that's possible. They wouldn't have the  
16 operational knowledge of -- of what's going on with the  
17 entire port that would determine whether or not we could  
18 take anybody in or not. Their interest would be "do I  
19 take someone in or not?"

20 Q. So how does a CBP officer who's stationed at  
21 the limit line know what to tell an asylum seeker who  
22 approaches the limit line when metering is occurring?

23 A. If they've been informed that we're not able to  
24 take people at that time, then they will inform the  
25 people approaching undocumented migrants that we will

1 not be able to take people at that time.

2 Q. What is CBP's opinion of nonprofit  
3 organizations that attempt to help migrants seek asylum?

4 MS. SHINNERS: Objection, scope.

5 A. I don't think CBP, as an agency, has one  
6 opinion of any organization.

7 Q. (BY MR. FENN) Is an asylum seeker who  
8 approaches the limit line at a port of entry in the  
9 El Paso Field Office more likely to gain entry if they  
10 are accompanied by an advocate or a lawyer, in your  
11 experience?

12 A. No. However, that has occurred. So we  
13 occasionally do get them accompanied by various  
14 advocates.

15 Q. And from your personal experience, why do you  
16 think asylum seekers feel that they need to be  
17 accompanied by an advocate or a lawyer when they present  
18 themselves at a POE?

19 MS. SHINNERS: Objection, foundation, that  
20 calls for speculation, scope.

21 A. From my personal perspective, I don't think  
22 they do that. I actually think it's the other way  
23 around. I -- I think the advocates go out recruiting  
24 people to bring with them. Judging from the -- the  
25 migrants that come in, they -- they make comments of,

1     you know, "that person there," and -- in other words, it  
2     doesn't seem like they even know them.

3           Q.    (BY MR. FENN)   So you don't think that asylum  
4     seekers seek out help from advocates or lawyers before  
5     presenting at a port of entry?

6           A.    I think --

7                   MS. SHINNERS:  Objection, scope, calls for  
8     speculation.

9                   You can answer.

10          A.    I think it's possible they do seek help, but in  
11     your example of those being brought up to a port of  
12     entry by advocates, in my personal experience, it  
13     appears like the advocates are seeking people to -- to  
14     bring them in.

15          Q.    (BY MR. FENN)   Okay.

16                  MR. FENN:  Let's take a look at  
17     Exhibit 171, please.

18          Q.    (BY MR. FENN)   Mr. Cleaves, I'm showing you  
19     what's been marked -- what will be marked as  
20     Exhibit 171.  This is a June 3rd, 2018, e-mail from  
21     Randy Howe to Hector Mancha, with the subject line "RE:  
22     Bridge even."  I'm not sure, that might be a typo in the  
23     subject line there.

24                  But do you see that?

25          A.    Yes.

1 Q. I'd like to look at the earliest e-mail on the  
2 third page of the document, please. This is an e-mail  
3 from Robert Moore to Roger Maier.

4 Do you personally know who Robert Moore is?

5 A. I know that he's a reporter, but I don't  
6 personally know him.

7 Q. Do you know who Mr. Moore works for?

8 A. I think it's something called Texas Monthly,  
9 but I'm not sure.

10 Q. Okay. And do you personally know Roger Maier?

11 A. I do, yes, sir.

12 Q. And what is his position within CBP?

13 A. He works for the Office of Public Affairs.

14 Q. Okay. Mr. Moore's e-mail reads: "I  
15 accompanied Ruben Garcia from Annunciation House today  
16 to talk to a group of Guatemalans who said they were  
17 denied the opportunity to come into the United States to  
18 make an asylum claim. After being with them, Ruben took  
19 a badly sunburned mother and her baby, as well as a  
20 16-year-old unaccompanied girl. Our group was stopped  
21 at the top of the bridge, just inside U.S. territory,  
22 for CBP agents who asked the Guatemalans for ID. The  
23 agents initially said they would not allow the three  
24 Guatemalans to move forward."

25 Did I read that correctly?

1 A. You read that correctly.

2 Q. Are you familiar -- excuse me.

3 Are you familiar with the organization  
4 Annunciation House?

5 A. I am.

6 Q. And are you personally familiar with Ruben  
7 Garcia?

8 A. I am.

9 Q. What is CBP's position regarding asylum seekers  
10 who are on U.S. soil when they make their asylum claim?

11 A. We process them.

12 Q. Always?

13 A. We should be processing them, yes.

14 Q. The e-mail goes on: "While we were waiting,  
15 another agent armed with a semiautomatic or automatic  
16 rifle arrives. At one point, he discharged his Taser  
17 toward the ground. It was not a threatening move, but  
18 it was audible and visible."

19 Are all CBP officers who are stationed at  
20 the limit line armed?

21 A. [REDACTED]  
22 [REDACTED]

23 Q. And I assume CBP officers undergo weapons  
24 training?

25 A. They do.

1 Q. Does that training include any portion on power  
2 dynamics for the perception of armed officers?

3 MS. SHINNERS: Object to the scope.

4 A. In general, yes. Officer --

5 MS. SHINNERS: You can go ahead.

6 A. -- officer presence or perception, yes, there  
7 is training on that.

8 Q. (BY MR. FENN) Does the weapons training  
9 include use of a Taser?

10 MS. SHINNERS: Scope objection.

11 A. Yes. Those who have a Taser are trained in the  
12 use of a Taser.

13 Q. (BY MR. FENN) The e-mail continues: "The  
14 supervisor, Agent Gomez, arrives after a few minutes.  
15 He told Ruben the facilities were at capacity, a claim  
16 Ruben challenged. Agent Gomez also initially said that  
17 Guatemalans couldn't move forward. Ruben and his  
18 assistant insisted that since they were on U.S. soil,  
19 the law required that they be processed. Agent Gomez  
20 eventually agreed to allow them to come forward to be  
21 processed."

22 Did I read that correctly?

23 A. Yes.

24 Q. And my question is: Are CBP officers who are  
25 stationed at the limit line and the supervisors at ports

1 of entry in the El Paso Field Office trained on the law  
2 regarding asylum seekers stepping foot onto U.S. soil?

3 A. Yes. Yes, they know if they're on U.S. soil,  
4 they should be processed.

5 Q. And the e-mail continues, from Mr. Moore:

6 "While I was there, I saw agents standing at the  
7 boundary blocking Guatemalans from coming in or trying  
8 to urge Guatemalans back to the Mexican side. At one  
9 point, one of the agents crossed into Mexican territory  
10 to keep a migrant from coming onto U.S. soil."

11 If it's true that the Guatemalans in  
12 question in this account were on U.S. soil, should they  
13 have been allowed to enter the port of entry?

14 A. If it's true, yes.

15 Q. And are CBP officers trained to station  
16 themselves in Mexican territory?

17 A. They're trained not to. My understanding is  
18 that did not occur.

19 Q. When you say "that did not occur," do you mean  
20 generally or in this particular instance?

21 A. In this particular instance.

22 Q. So do you have familiarity with this particular  
23 event?

24 A. On a personal, no, but as a representative,  
25 yes. I also know that the officer who discharged the

1 Taser, he was doing a spark test at the beginning of his  
2 shift, which is part of the training. However, all  
3 officers were reminded you don't do that in public. So  
4 that was inappropriate for him to do at that time.

5 Q. So the -- so CBP officers are trained not to  
6 perform their spark tests in public?

7 A. Yes. Well, they were definitely told after  
8 this that's the case, but my understanding is, yes, that  
9 there's no reason for a spark test to be done in public.

10 Q. Okay. Let's go -- strike that.

11 You mentioned that Roger Moore is, you  
12 think, a reporter for Texas Monthly, correct?

13 A. Yes.

14 Q. And in your personal experience, is it common  
15 for reporters or other media members to accompany asylum  
16 seekers to ports of entry in the El Paso Field Office?

17 A. I think at this time, when it was starting  
18 back, it was somewhat common.

19 Q. Do you personally read Texas Monthly?

20 A. No.

21 Q. Did you read the article that Mr. Moore wrote  
22 regarding this incident?

23 A. No.

24 MR. FENN: Let's go two e-mails up to the  
25 bottom of the first page, please.

1 Q. (BY MR. FENN) And if I could direct your  
2 attention to Mr. Moore's e-mail, the thir- -- yeah, the  
3 third sentence there, starting "Ruben Garcia  
4 challenged." Do you see that sentence?

5 A. Yes.

6 Q. Okay. It reads: "Ruben Garcia challenged the  
7 accuracy of the capacity claims. Can you tell me the  
8 capacity for holding people at the bridges, particularly  
9 PDN, where we were today? Can you provide some  
10 statistics for the past week or so on the number of  
11 people detained at the ports?"

12 Did I read that correctly?

13 A. Yes.

14 Q. Do you know whether Mr. Maier ever responded to  
15 this portion of Mr. Moore's enquiry about capacity  
16 numbers?

17 A. I imagine it might be on the top of this  
18 message string, whatever his response was, I guess.

19 Q. Well, we can take a minute if you want to look  
20 at the rest of the e-mail chain.

21 A. Okay.

22 MR. FENN: Kevin, if you could scroll up so  
23 that we can see the rest of it, that would be helpful.

24 Q. (BY MR. FENN) And, then, Mr. Cleaves, let me  
25 know when you've had a chance to read the rest of the

1 chain.

2 A. Okay. It looks like he responded on June 2nd,  
3 Roger Maier back to Robert Moore.

4 Q. Right. But in any of Mr. Maier's responses,  
5 did you see anything about capacity numbers at the port  
6 of entry that day?

7 A. Yeah. He says it would vary based on multiple  
8 factors.

9 Q. Okay. And if you were asked for capacity  
10 numbers for Paso del Norte or for the El Paso Port of  
11 Entry by somebody at OFO for a given day, you would be  
12 able to get those numbers, correct?

13 A. I can give them physical capacity, detention  
14 capacity numbers, but operational capacity, probably  
15 not. At best, we'd have to make an estimate of what was  
16 occurring at that time, and the farther back you go, the  
17 more difficult that would be to estimate.

18 Q. Okay. And, in fact --

19 A. Farther back in time I mean.

20 Q. I'm sorry. I didn't mean to interrupt you.

21 A. No.

22 Q. In fact, we did look at an example where the  
23 El Paso Field Office provided capacity numbers for each  
24 port of entry within the El Paso Field Office to OFO,  
25 correct?

1           A.    You provided past e-mails that listed the  
2   physical detention capacity of multiple ports of entry,  
3   of which El Paso was one of them.  Are you referring to  
4   those e-mails?

5           Q.    Yes, yes, correct.

6           A.    Yes, I remember those.

7           Q.    Okay.

8                         MR. FENN:  Kevin, if we could please pull  
9   up Exhibit 172.

10          Q.    (BY MR. FENN)  Mr. Cleaves, I'm showing you  
11   what will be marked as Exhibit 172.  This is a document  
12   Bates-numbered AOL-DEF-37758.  It is an e-mail dated  
13   June 15th, 2018, from Ryan Koseor to the El Paso Ops  
14   Center copying Randy Howe, Hector Mancha, you, and  
15   others.  Do you see that?

16          A.    Yes.

17          Q.    I'd like to move one e-mail down in the chain  
18   to Daniel Thomson's 6:35 p.m. e-mail.  Do you see that?

19          A.    Yes.

20          Q.    Okay.  Mr. Thomson is, in this e-mail,  
21   providing capacity numbers for the POEs in the El Paso  
22   Field Office, correct?

23          A.    Yes.

24          Q.    And Mr. Thomson states that the Port of El Paso  
25   is on at 50.4 percent capacity, correct?

1 A. Yes.

2 Q. But Mr. Thomson also states that PDN and Ysleta  
3 are "holding the line," correct?

4 A. Yes.

5 Q. And does that mean that they, at this time,  
6 were metering?

7 A. Yes.

8 Q. And staying within that same e-mail but moving  
9 down to Mr. Thomson's description for the Port of  
10 Tornillo, the description for the Port of Tornillo  
11 states that it is: "Processing and housing 0 detainees  
12 with capacity of [REDACTED]"

13 Correct?

14 A. Yes.

15 Q. Do you see where it says "Current State -  
16 Challenges" right underneath Tornillo Port of Entry?

17 A. Yes, sir.

18 Q. And under that, the first bullet reads:  
19 "National media (CNN) attention outside the port and  
20 media request to enter the port due to the HHS UAC  
21 facility. Media is attempting to capture photos of the  
22 housing and children."

23 Did I read that correctly?

24 A. Yes.

25 Q. In your experience, why would this be

1 considered a challenge?

2 A. Well, they decided to -- and I think it was  
3 GSA. I'm not sure who made the decision, but the  
4 Tornillo Port of Entry has a large amount of land, and  
5 their cargo facility, it is not used due to -- they were  
6 built for cargo, and the Mexican side was supposed to  
7 build their infrastructure and facilities to match it,  
8 but they haven't done it yet.

9 So there's a lot of open space that -- a  
10 lot of that space was given away to another agency, in  
11 this case, Health and Human Services. However, those  
12 facilities use the same exit gates and entrance gates,  
13 so it presents a challenge to the port of entry because  
14 these people are protesting one facility, but it -- it  
15 impedes on the port of entry's ability to -- to operate  
16 sometimes.

17 Q. Do you recall at this time what CBP's position  
18 would have been with respect to CNN taking photos of the  
19 HHS UAC facility?

20 A. No. I mean, it was -- it was Health and Human  
21 Services' facility, so I think our view was it's --  
22 Health and Human Services would have to deal with  
23 whether or not that was appropriate or not.

24 Q. Okay. And then, the second bullet point there  
25 under "Current State - Challenges" says: "Congressman

1 Beto O'Rourke planning march to Tornillo Port of Entry  
2 on June 17th, 2018."

3 Did I read that correctly?

4 A. Yes.

5 Q. Do you recall if the march described in that  
6 bullet point actually occurred?

7 MS. SHINNERS: Object to the scope.

8 A. Yes, I think so. There were -- there were  
9 several protests and marches, so I think this was one of  
10 them. The -- these were protests against the Health and  
11 Human Services facility, but since it's on the same land  
12 as the Tornillo Port of Entry, you know, it -- it  
13 involved us, only because we're nearby, we're next door,  
14 so...

15 Q. (BY MR. FENN) Is it common for media or  
16 politicians to visit ports of entry in the El Paso Field  
17 Office?

18 A. It's common -- somewhat common for the Port of  
19 El Paso. It's extremely uncommon for the Port of  
20 Tornillo.

21 Q. Uh-huh. And is that because Tornillo is a  
22 smaller port of entry than El Paso?

23 A. I think so.

24 MS. SHINNERS: Object to the scope.

25 Q. (BY MR. FENN) Congressman O'Rourke was a

1 member of the U.S. House of Representatives and  
2 represented El Paso, correct?

3 A. Yes, sir.

4 Q. Did Congressman O'Rourke often visit ports of  
5 entry in the El Paso Field Office?

6 MS. SHINNERS: Object to the scope.

7 A. I know he often visited the Port of El Paso.  
8 How often he visited the other ports of entry, I don't  
9 know if you would describe it as frequent or not, but...

10 Q. (BY MR. FENN) And did you ever personally  
11 interact with Congressman O'Rourke?

12 MS. SHINNERS: Same objection to scope.

13 A. At least on two occasions, yes.

14 Q. (BY MR. FENN) And can you describe the nature  
15 of those interactions?

16 A. Sure. One of those --

17 MS. SHINNERS: Same objection.

18 A. One of those was a leadership meeting at the  
19 El Paso Field Office that he attended and spoke to us  
20 on, and one was when there was a Tornillo holding  
21 facility in 2016 at the Tornillo -- on the land of  
22 Tornillo Port of Entry, and he visited that site.

23 Q. (BY MR. FENN) Okay.

24 MR. FENN: Kevin, could we pull up  
25 Exhibit 173, please?

1 MS. SHINNERS: I just -- I don't have that  
2 exhibit yet. I'll let you know when we get it.

3 MR. FENN: Okay.

4 MS. SHINNERS: Received. Received.

5 MR. FENN: Okay. Thank you.

6 Q. (BY MR. FENN) Mr. Cleaves, I am showing you  
7 what's -- what will be marked as Exhibit 173. This is  
8 Congressman Beto O'Rourke's Twitter page, and it  
9 contains a video clip that was posted on December 14th,  
10 2018. Do you see that?

11 A. Yes.

12 Q. And in December 2018, was the El Paso Port of  
13 Entry engaged in metering?

14 A. Yes.

15 Q. Okay.

16 MR. FENN: Kevin, could we -- actually,  
17 strike that.

18 Q. (BY MR. FENN) The description that accompanies  
19 the video on Mr. O'Rourke's Twitter page says that  
20 Congressman O'Rourke visited Juárez. Do you see that?

21 A. Yes, sir.

22 Q. And Juárez is on the Mexican side of the border  
23 adjacent to El Paso; is that correct?

24 A. Yes, sir, a large city adjacent to El Paso on  
25 the Mexican side.

1 Q. Okay.

2 MR. FENN: Kevin, could we play the video?

3 (Video playing.)

4 (Video stopped.)

5 Q. (BY MR. FENN) Mr. Cleaves, do you agree with  
6 Congressman O'Rourke's comparison of the asylum process  
7 before metering was implemented in El Paso as compared  
8 to after metering was implemented in El Paso?

9 MS. SHINNERS: Objection, to memory test of  
10 the video.

11 But go ahead.

12 A. The only thing I disagree with his  
13 characterization is the word "rejected." They haven't  
14 been rejected. They're just waiting in line to then go  
15 into the same process that he described as before  
16 metering.

17 Q. (BY MR. FENN) And in the video, the asylum  
18 seekers had wait-list numbers written on their arms.  
19 Did you see that?

20 A. I did.

21 Q. Has it ever been a CBP practice at ports of  
22 entry in the El Paso Field Office to write wait-list  
23 numbers on asylum seekers?

24 A. No. Mexican Immigration reported that the  
25 migrants themselves actually started that practice.

1 Q. Do you have any reason to believe that that  
2 type of action was ever performed by a CBP officer  
3 metering an asylum seeker in the El Paso Field Office?

4 A. No, sir.

5 MS. SHINNERS: Object to the form.

6 Sorry, Mr. Cleaves. Go ahead.

7 A. No.

8 Q. (BY MR. FENN) Okay. And has it ever been a  
9 CBP practice at ports of entry in the El Paso Field  
10 Office to hand out tickets with wait-list numbers to  
11 asylum seekers?

12 A. I don't think we ever handed out tickets, but  
13 in the first week of 2016 when we first implemented it,  
14 they were giving appointments. They were taking names  
15 down, and then we had to correct that. So that was part  
16 of the -- that was part of the operational steps we took  
17 in -- in -- when it was first implemented in 2016, it  
18 was not correct.

19 Q. And when asylum seekers were given appointments  
20 in 2016, was that a verbal appointment or a verbal  
21 notification of when their appointment was?

22 A. My understanding, it -- it was, yes, sir.

23 Q. At that time in 2016 when metering was  
24 occurring at El Paso, were asylum seekers who were  
25 turned back given any -- any documentation or anything

1 on paper?

2 MS. SHINNERS: Object to the form.

3 A. No. My understanding is they were not issued  
4 anything.

5 Q. (BY MR. FENN) Okay. Are you aware that  
6 Congresswoman Alexandria Ocasio-Cortez and other members  
7 of Congress visited border patrol and CBP detention  
8 facilities in El Paso in July of 2019?

9 MS. SHINNERS: Object to the scope.

10 A. Yes.

11 Q. (BY MR. FENN) I'm sorry, Mr. Cleaves. Was  
12 that a "yes"?

13 A. Yes.

14 Q. Did you personally interact with any of the  
15 members of Congress when they visited?

16 MS. SHINNERS: Same objection to scope.

17 A. Yes.

18 Q. (BY MR. FENN) Which -- which congressmen or  
19 women did you interact with during their visit?

20 MS. SHINNERS: Same objection.

21 A. I don't remember --

22 THE WITNESS: I'm sorry.

23 MS. SHINNERS: Go ahead.

24 A. I don't remember because they were in a group.  
25 So the -- the one I remember answering questions from

1 was Ms. Escobar, and that's because she's our local  
2 representative, so I know her. And then, the others,  
3 you know, I had -- we had questions from multiple, so  
4 I -- I don't know which ones. I don't remember which  
5 ones asked questions and which ones we were answering,  
6 and it was quite brief actually.

7 Q. (BY MR. FENN) Okay. And I know you testified  
8 earlier that you do not have a Facebook account and --  
9 and never have. Are you aware of the Facebook group  
10 called "I'm 10-15"?

11 MS. SHINNERS: Object to the scope.

12 A. I am not aware of that Facebook group, but I am  
13 aware of the circumstances on how that Facebook group  
14 came to -- to be known, I guess, in general.

15 Q. (BY MR. FENN) And, if you could, tell us how  
16 did that Facebook group come to be known?

17 A. My understanding is --

18 MS. SHINNERS: Object to the scope.

19 THE WITNESS: Oh, I'm sorry.

20 A. My --

21 MS. SHINNERS: You can continue.

22 THE WITNESS: Okay.

23 A. My understanding is that there were some  
24 extremely inappropriate posts on that site related to  
25 migrants, and that's how I became aware of it.

1 Q. (BY MR. FENN) Had you ever seen any of those  
2 allegedly inappropriate posts from that Facebook group?

3 MS. SHINNERS: Object to the scope.

4 A. In my --

5 Q. (BY MR. FENN) Sorry. I didn't hear your  
6 response, Mr. Cleaves.

7 A. No problem. No, I don't think I've seen any of  
8 the posts. I think I've seen a photograph that was  
9 supposed to be a part of a post because I think it was  
10 widely distributed in the media or something like that.

11 Q. And was -- was the photograph you're referring  
12 to a photograph of a father and daughter who died  
13 attempting to cross through the Rio Grande?

14 A. Yes, sir.

15 MS. SHINNERS: Object to the scope.

16 Q. (BY MR. FENN) Are you aware that -- strike  
17 that.

18 Do you know whether CBP ever issued any  
19 sort of statement condemning the allegations surrounding  
20 the Facebook group "I'm 10-15"?

21 MS. SHINNERS: Object to the scope.

22 A. I don't know if the agency did or not, but  
23 I -- I -- I want to say I think they did, but I don't  
24 recall if something specific was issued like that or  
25 not.

1 Q. (BY MR. FENN) Okay. So it's fair to say that  
2 you wouldn't have been personally involved in issuing  
3 such a statement if one was issued?

4 A. No, and I would be the wrong component. My  
5 understanding was that was a border patrol site or -- or  
6 border patrol agent's site, so OFO didn't have much  
7 knowledge or involvement in any of that other than us  
8 finding out about it or hearing about it.

9 MR. FENN: This might be a good time to  
10 take a break if you want. We've been going for about an  
11 hour and a half.

12 MS. SHINNERS: Okay. Do you know how much  
13 you have -- you guys have left?

14 MR. FENN: I think we're -- we're getting  
15 closer, but I would estimate maybe an hour.

16 MS. SHINNERS: Okay. Yeah, we can go off  
17 the record.

18 MR. FENN: Okay.

19 THE VIDEOGRAPHER: The time is 2:31 p.m.  
20 We're going off the record.

21 (Break was taken.)

22 THE VIDEOGRAPHER: The time is 2:49 p.m.  
23 We're back on the record.

24 Q. (BY MR. FENN) Welcome back, Mr. Cleaves.

25 MR. FENN: Kevin, if you could please put

1 up Exhibit 86.

2 Katy, have you received this exhibit?

3 MS. SHINNERS: Yes. Thank you.

4 Q. (BY MR. FENN) Okay. Mr. Cleaves, I'm showing  
5 you what's been previously marked as -- I'm sorry --  
6 what will be previously marked as exhibit -- let me try  
7 that again. I promise I'll stop doing that.

8 I am showing you what will be marked as  
9 Exhibit 86. This is a June 5th, 2018, memorandum from  
10 Homeland Security Secretary Kirstjen Nielsen, with the  
11 subject line "Prioritization-Based Queue Management."

12 Do you see that?

13 A. Yes.

14 MR. FENN: And if we could flip to the  
15 second page of the memo.

16 Q. (BY MR. FENN) About halfway down, there is a  
17 highlighted section, and that section reads: "CBP  
18 personnel and resources that would otherwise be deployed  
19 to process inadmissible arriving aliens can focus on the  
20 detention and apprehension of narcotics and currency  
21 smugglers."

22 Did I read that correctly?

23 A. Yes.

24 Q. Does this sentence still reflect the policy of  
25 CBP?

1 A. It --

2 MS. SHINNERS: Objection.

3 THE WITNESS: I'm sorry.

4 MS. SHINNERS: But you can answer,  
5 Mr. Cleaves.

6 THE WITNESS: Yes, ma'am.

7 A. Yes. In 2016, at the Port of El Paso, the  
8 overcrowding reached emergent levels, so we pulled from  
9 other mission sets. We pulled a lot from other mission  
10 sets, and it degraded our ability to perform those  
11 mission sets to some degree. And it was the focus in  
12 2018, as the surge began again, to -- to not do that.

13 Q. (BY MR. FENN) So in 2016, you were able to  
14 shift resources in order to handle what -- what might  
15 have been a surge in migrants seeking asylum; is that  
16 right?

17 A. Yeah. In 2016, we shifted resources to try and  
18 handle that emergent surge that we were experiencing,  
19 but it didn't work. It wasn't sustainable, and it was  
20 degrading our -- our other mission sets. Some of the  
21 mission sets were degraded significantly. So it was  
22 becoming a problem.

23 So as -- as 2018, at least for the Port of  
24 El Paso's perspective, when the surge started hitting  
25 again and -- and -- and started to become very similar,

1 it was a concern. And -- and it was expressed to us to  
2 not degrade the other mission sets to the point that you  
3 did before. So continue processing, but there will have  
4 to be some waiting in line so that way we don't degrade  
5 the other mission sets.

6 Q. And you said that --

7 MS. SHINNERS: I'm sorry to interrupt. I  
8 have lost -- we can go off the record if you'd like, but  
9 I've lost my -- Kevin, I've lost my ability to chat.

10 MR. FENN: Yeah, let's go.

11 MAGNA TECH: One second.

12 THE VIDEOGRAPHER: The time is 2:52 p.m.  
13 We're going off the record.

14 (Off the record.)

15 THE VIDEOGRAPHER: The time is 2:53 p.m.  
16 We're back on the record.

17 Q. (BY MR. FENN) Okay. Mr. Cleaves, you -- you  
18 mentioned that the shifting of resources in 2016 was not  
19 effective, correct?

20 A. Correct.

21 Q. But you also said before that the Port of  
22 El Paso did not engage in metering between December 2016  
23 and, we'll call it, May of 2018, correct?

24 A. Correct.

25 Q. Okay.

1 MR. FENN: If we could look back at the  
2 document on the next page.

3 Q. (BY MR. FENN) And I'm looking at the second  
4 full paragraph, the second-to-the-last line there.  
5 Secretary Neilsen directs CBP to "initiate a 30-day  
6 pilot program to prioritize staffing and operations" at  
7 all ports of entry on the U.S.-Mexico border, correct?

8 A. Yes.

9 MR. FENN: And if we could zoom in on  
10 the -- the numbered portion below.

11 Q. (BY MR. FENN) That prioritized order is,  
12 first, national security efforts; second,  
13 counter-narcotics operations; third, economic security;  
14 and fourth, trade and travel facilitation, correct?

15 A. Yes.

16 Q. And inspecting and processing asylum seekers  
17 does not fall within those four priorities, correct?

18 A. It's not listed within those four, correct.

19 Q. And because of this prioritization, fewer  
20 asylum seekers get processed than if CBP treated all of  
21 its statutory mandates with equal priority, correct?

22 A. Incorrect.

23 MS. SHINNERS: Objection.

24 A. I need to learn to pause.

25 Incorrect. At least for the Port of

1 El Paso, fiscal year 2019 was the only year the Port of  
2 El Paso consistently did metering for the entire year,  
3 and we processed more inadmissibles that year than any  
4 other year without metering. We processed 12 percent  
5 more inadmissibles in 2019 than 2018. 2018, we only did  
6 metering for about half the year, and we processed  
7 10 percent more inadmissibles than 2016, and in 2016 we  
8 only did 3 weeks.

9 MR. FENN: I -- I'm sorry. I'm -- I'm  
10 hearing, I think, somebody else's voice or a clip or  
11 something in the background. If -- if -- wherever  
12 that's coming from, if they could please mute it, that  
13 would be helpful.

14 Q. (BY MR. FENN) Okay. The queue management in  
15 the title of Ms. Nielsen's memo, queue management refers  
16 to metering, correct?

17 A. Yes.

18 Q. And so this entire memo is really about how to  
19 implement metering in a way that ensures it is the  
20 lowest of CBP's priorities, correct?

21 A. No.

22 MS. SHINNERS: Objection, argumentative.

23 A. No.

24 Q. (BY MR. FENN) Would you agree -- I think you  
25 did agree that processing and inspecting asylum seekers

1 does not appear on this list of four priorities that we  
2 have in front of us, correct?

3 A. Correct.

4 Q. And those four priorities are supposed to be  
5 prioritized ahead of processing and inspecting asylum  
6 seekers, correct?

7 A. Yes, that's the emphasis of this memo, I  
8 believe. However, in many ways, that's always been our  
9 priority, especially national security and narcotics,  
10 which includes outbound and -- and trade, cargo. That's  
11 part of our mission statement. So it's not too much of  
12 a departure from what we've always been doing in  
13 cer- -- in certain ways.

14 Q. Did CBP know that adopting priority-based queue  
15 management would impact the number of asylum seekers  
16 that could be processed and increase the number that  
17 could be turned away?

18 A. I don't know if they knew if that would be the  
19 case. I know for the Port of El Paso, it -- it did  
20 create a wait time, people waiting in line. However,  
21 for us, in 2019, we're actually able to process more  
22 with metering, and I think it's because metering allowed  
23 us to prevent emergencies. They -- they allowed us to  
24 prevent the crisis management that -- that occurred in  
25 2016 and -- and other times.

1                   And so you can be pretty efficient and  
2     effective, even though -- so the -- in other words,  
3     keeping a consistent flow. And it was successful in  
4     processing more people than in the other years. And  
5     then, of course, at the end of 2019, we reached the end  
6     of the line. So Mexican Immigration in late  
7     January 2020 started reporting that there were no people  
8     in line. And then, throughout February, intermittently  
9     there would be some there in low numbers and some --  
10    and -- and at times, there were none.

11           Q. Okay. But you don't know one way or another  
12    whether CBP knew prior to adopting this priority-based  
13    queue management system whether it had the potential to  
14    lead to an increased number of asylum seekers who were  
15    turned away?

16           A. No, I do not know that.

17                   MR. FENN: Kevin, let's put up, please,  
18    Exhibit 174.

19           Q. (BY MR. FENN) Mr. Cleaves, I'm showing you  
20    what will be marked as Exhibit 174, and it's  
21    Bates-labeled AOL-DEF-00095574. It is a May 24th, 2018,  
22    e-mail from Ray Provencio to Randy Howe and copying  
23    Hector Mancha, with subject line: "RE: Info needed by  
24    1600."

25                   Do you see that?